

JUDGE DEMPSEY'S NOTICE FOLLOWING SMALL CLAIMS PRE-TRIAL CONFERENCE

IMPORTANT - READ CAREFULLY!

YOU HAVE NOW ATTENDED A PRE-TRIAL CONFERENCE ON A SMALL CLAIMS ACTION. THIS WILL BE THE ONLY NOTICE YOU WILL RECEIVE CONCERNING YOUR TRIAL DATE AND WHAT YOU NEED TO DO TO PREPARE FOR YOUR TRIAL. DO NOT LOSE YOUR ORDER AND NOTICE OF TRIAL. MAKE SURE YOU ARE AWARE OF ALL OF THE FOLLOWING:

1. **NON-JURY TRIAL:** You are now scheduled for a non-jury trial before a County Court Judge.
2. **TRIAL DATE:** Do **NOT** forget your trial date and **BE ON TIME**. Failure to come to court on the given date and time may result in the dismissal of your case or a final judgment being entered against you.
3. **EXCHANGE OF DOCUMENTS AND INFORMATION:** If the Judge told you to submit any documents or give any information to the other party (such as a list of your witnesses' names and addresses), **DO IT**. Failure to do so as directed by the Judge may cause Court sanctions against you such as extra Court costs, contempt of Court, or delays.
4. **COUNTERCLAIMS:** If you are the Plaintiff and you have been given a written notice that a counterclaim has been filed against you in this lawsuit, this means that you are now being sued by the Defendant. Also, if at the pretrial conference the Judge allowed the Defendant a certain number of days to file a counterclaim, the Defendant must file the counterclaim within that number of days from the date of this pretrial conference. If the defendant does that, the Defendant has a claim now pending against you.
5. **THIRD PARTY COMPLAINTS:** If you are the Defendant and you believe that the Plaintiff may win the suit against you, but, if the Plaintiff does, someone else should pay you so you can pay the Plaintiff, then you must file a Third Party Complaint against that person and serve them with notice of your claim. Once served, that person must appear in Court as you have to answer your complaint against them. This must be done prior to trial within the time allowed you by the Judge.
6. **TRIAL PREPARATION:** Bring all witnesses and all documents and all other evidence you plan to use at the trial. There is ***only one*** trial. **Bring original and TWO COPIES of all Exhibits to be presented to the Court (1 copy for opposing party and one copy for the Court.)** If you have photos, videos, text messages, etc, you will need to have a way to show the court, **and** have a way to submit that evidence to the clerk—either printed hard copies or on a CD/DVD/flash drive...**And** you must bring a laptop or other device to display any digital evidence you are submitting. **Generally, estimates, letters and affidavits are inadmissible in trial unless both parties agree. If someone has knowledge about your case, then that person needs to testify in court and be subject to questioning by the other side. If your case involves technical issues such as automotive repair, construction, air conditioning, pool work, etc., you may need an expert witness to explain the issues to the court so that the judge can properly evaluate the questions of liability and damages.**
7. **WITNESS SUBPOENAS:** If a witness you need will not willingly come to court, you may have the clerk issue a subpoena to be served on them. You can do this on the 1st floor of the courthouse, Room 100. There are costs that must be paid to the Clerk for issuing the subpoena, and costs to the Sheriff to serve the subpoena.
8. **COURT REPORTER AND APPEALS:** Your non-jury trial will not be recorded. If you wish to record the proceedings, you must either arrange for a tape recorder to record the hearing and the tape is left with the court, or a court reporter is necessary. Appeals to a higher court because you are not satisfied with the outcome of the trial are governed by special rules. One of these rules requires that the appellate court have a complete record of the trial to review for errors. If you do not have a court reporter or other means of preserving the record at your trial, your chances for success on appeal will be severely limited.

9. **SETTLEMENT:** If all parties agree on settlement of all claims before trial, each party must notify the Judge by telephone so that the allotted trial time may be reassigned to someone else. Immediately thereafter, the parties must, **IN WRITING**, notify the Clerk of the settlement, and the Court will thereafter enter an order approving the settlement and closing the case. The mailing address is Clerk of the County Court, Civil Division, Volusia County Courthouse, P.O. Box 6043, DeLand, FL 32721. The telephone number of Judge Dempsey's office is 386-822-5008, the fax number is 386-822-5012.
10. **ADDRESS AND PHONE NUMBER CHANGES:** All changes in mailing address must be furnished in writing to the Clerk and to the opposing party. The Clerk of Court must also have a phone number by which the Court may contact each party directly if necessary.
11. **VIDEO TESTIMONY:** You must ask permission before the trial for a witness or party to appear by Zoom, video testimony. If the Court has given prior written approval, witnesses and/or record custodians may appear by Zoom video conference. It is your responsibility to make sure your witness is available at the time they are needed during the trial. Technical issues should be worked out prior to the trial. Continuances may not be granted due to technical issues that could have been worked out prior to trial.
12. **RULES AND PROCEDURES FOLLOWED AT TRIAL:** Your case is governed by the Florida Small Claims Rules. You can find these rules on the internet or in the law library, located on the 3rd floor of the courthouse. At trial each side will have an opportunity to make an opening statement. Thereafter, the Plaintiff will testify and be subject to questioning by the Defendant. Plaintiff's witnesses will then be heard, subject to questioning by the Defendant. The Court will consider receiving documents or exhibits into evidence as they are referred to by the Plaintiff or witnesses. The Defendant will then have a corresponding opportunity to testify, present defense witnesses and offer exhibits. The Defendant and the defense witnesses will be subject to questioning by the Plaintiff. After all of the evidence has been presented, both sides will have the opportunity to present a brief closing statement. The judge will then decide the case.
13. **CONTINUANCES:** All requests for continuances should be filed in writing with the Clerk of the Court and a copy sent to the other side. Motions for Continuances must be heard by the Court and therefore, you must contact the Judge's Judicial Assistant (386-822-5008) to reserve a time for the Court to consider your Motion for Continuance. If it is difficult or inconvenient for you to personally come to the Court to argue or respond to a Motion for Continuance, you will need to request a hearing by Zoom.
14. **ADDITIONAL PROBLEMS:** For anything you do not understand about the above information and for any additional questions you may have concerning the preparation of your case for trial, please contact the Clerk of County Court, Civil Division, in person or by telephone (386-736-5915). ***The clerk is not authorized to practice law and therefore cannot give you legal advice on how to prove your case.*** However, the Clerk can be of assistance to you in questions of procedure only. In the event that you need legal advice, you will need to contact an attorney.

Online resources:

Volusia County Clerk of Court Small Claims information and forms:

http://www.clerk.org/forms.aspx#small_claims

A link to the Florida Small Claims Rules is available here:

<https://www.floridabar.org/wp-content/uploads/2017/04/small-claims.pdf>