# Small Claims of $25,000.00 or Less

If you have a claim against or dispute with another person or company with a value of damages equal to $25,000.00 or less, or a lawsuit seeking injunctive relief or a restraining order, you can sue that person or company in a General Sessions Court. A General Sessions Court also has unlimited monetary jurisdiction to hear actions for forcible entry and detainer (landlord / tenant cases) and actions to recover personal property. You do not have to be a United States citizen to file a claim in General Sessions Court, but you do have to be at least 18 years old. If you are younger than 18, you must have a guardian, parent, relative or adult friend bring suit on your behalf. If your LLC or incorporated business files a case in General Sessions Court, it must be represented by a licensed attorney – you cannot represent the incorporated entity yourself.

To file a lawsuit in a court of General Sessions, you need to know the basis for your claim so you can fill out the proper documents to file to start your lawsuit. Most General Sessions Court clerks in each respective county have form documents to provide to you so you can fill-in the blanks and pay a filing fee to start your lawsuit. The Administrative Office of the Courts ("AOC") also has certain form documents on line at www.tncourts.gov for your use. While the clerks of the General Sessions Courts and the AOC can provide you with helpful forms, neither the clerks nor the AOC can provide you with legal advice or help you practice law.

In order to start your lawsuit, you will need to know exactly how much money you are claiming or the relief you are seeking, the reason why you are claiming you are owed money or relief, the date when your dispute arose, the place where your dispute occurred and the circumstances surrounding your dispute. Once you find the proper form for your type of lawsuit and complete it, you must file the document and pay the General Sessions Court clerk a fee to file your lawsuit and have it served on the person or company you are suing. If you are suing a person, you must know that person's full name and home address so the process server can find them to serve them with your lawsuit. Suing companies can be more difficult than suing people because you must know the correct legal name of the company before you can sue it properly and you must serve a company through its proper legal agent (called its "registered agent"). You can look up an incorporated entity's registered agent at the Tennessee Secretary of State's website. Generally, a General Sessions lawsuit must be filed in the county where the person you are suing lives, in the county where the accident or incident giving rise to your lawsuit occurred, where the principal office of the company is located or where the contract that forms the basis of your lawsuit was signed by the last party to the contract.

If your claim involves a tenant as a defendant, you may file a detainer action in General Sessions Court for unpaid rent, eviction of the tenant and damages that the tenant caused to the leased premises. Generally, there are certain legal requirements which must be met by you prior to filing an action for eviction. Some counties in Tennessee (including Knox, Anderson, Sevier and Blount counties) follow the Uniform Residential Landlord Tenant Act ("URLTA") when the leased premises are residential. The URLTA provides certain rights and responsibilities for both landlords and tenants. If your rental property is residential and located in a county where the URLTA applies, you should review the URLTA before you

take any action against a landlord or a tenant in court. More details involving some of the rights and responsibilities of landlords appear under the Home Ownership and Rental Topic entitled "Rights and Duties of Landlords." Be aware that during the COVID pandemic, orders issued by the governor and the Center for Disease Control may affect a landlord's ability to evict a tenant under certain circumstances.

Once you have filled out and filed your lawsuit in General Sessions Court, copies of your lawsuit will be sent to the appropriate sheriff's office so the sheriff can attempt to serve your lawsuit on the person or company you are suing. Generally, a lawsuit must be served on the person or company you are suing before you can obtain a monetary judgment, injunctive relief or a restraining order against that person or company. If the lawsuit is an action for detainer and you are only seeking possession of the leased premises, you may be able to obtain an order for possession if the sheriff's office attempts service of process the proper number of times and then posts the lawsuit on the leased premises. If the sheriff's office cannot locate the person or company you are suing, you may not be able to obtain the judgment or relief you are seeking from the court. If the sheriff's office is able to locate and serve the person or company you are suing, a court date will be set. You should check back with the General Sessions Court clerk periodically to learn if your lawsuit was served and when your trial is set to occur.

Usually, if the sheriff's office is able to serve your lawsuit on the person or company you are suing, a trial will be set to occur within sixty (60) days from the date you filed your lawsuit. If one of the people or companies you are suing lives outside the county in which the lawsuit was filed or in another state, it could take much longer than sixty (60) days to obtain service of process on that person or company.

If you are a person being sued in General Sessions Court, generally you must be served personally with a copy of the lawsuit prior to trial. If you ignore the lawsuit and fail to appear on the date of the trial, you will not be able to present your side of the lawsuit and the court will likely enter judgment against you by "default." Even if you believe you have no defense to a lawsuit, you should strongly consider appearing at the time of your trial to find out what happens and to try to make payment arrangements with the person or company that sued you so your wages are not garnished or your assets are not levied upon. If you believe you have a defense to the lawsuit, you should appear at trial to present evidence to the court about why the person or company that is suing you is not entitled to the money or relief that is being sought. [If you appear in person and ask the Court for a postponement for additional time to find an attorney, most Courts will agree to grant such a request.]

Courts generally require that you dress appropriately when you appear in court. It is always a good idea when you appear in court to dress as though you are going to a wedding or to church. It is never appropriate to wear shorts or only a T-shirt to court. You should also refrain from wearing flip-flops or clothing that is distracting or that might cause you to lose credibility with the court.

While a General Sessions trial is a bench trial or "judge only" trial and there are no juries involved, the judge presiding over the trial must follow rules of evidence and other rules of law. Generally, a judge will permit each party to present evidence and tell his or her side of the dispute under oath. You and the other party may bring in witnesses and documents to support your argument. There are many documents that a court will not consider if they contain statements made by others outside of court and

if they are being submitted to try to establish the truth of the statements contained within the documents. This is called "hearsay" evidence, and the judge will not allow it if the other side objects to it. If you have experts, your experts should appear in court to testify to the facts. Just because an expert made an invoice, letter or some other document does not mean that the court can consider that document without the expert being present to authenticate and verify that document.

The judge hearing your matter may permit you to be cross-examined or questioned by the other party. You should avoid getting angry and arguing while you are providing your testimony to the court. You may also be permitted to question a witness at trial. No judge will tolerate foul language or rude behavior in court.

Occasionally, a judge may ask each party certain questions. If you are asked a question by a judge, you should make every effort to answer that question truthfully and directly.

After the judge has heard all of the facts, evidence and arguments of both parties, the judge will review both sides of the case and usually make a decision at the end of the trial. On rare occasion, a judge may want to take more time to research the law to provide the parties with a written decision at a later time. Whether the court rules from the bench at the end of your trial or renders a written opinion at a later time, you will receive notice of that decision.

Whether you are a person bringing the lawsuit or a person being sued, if you lose your case or you do not agree with the court's decision, you have a right to appeal to a higher court. The General Sessions Court clerk will have documents for you to fill out and file if you want to appeal your case to a higher court. You will need to fill out the appeal documents, pay a fee to the court clerk and possibly post a bond in order to properly appeal your case to a higher court. You only have ten (10) days after the General Sessions Court enters its decision to file your appeal. If you do not file your appeal correctly or within the time permitted, you will forever waive your right to appeal your case and the court's decision will become final. If you properly appeal your case, your matter will be transferred to a higher court called a Circuit Court. In many cases, you have a right to a jury trial in a Circuit Court, but you must properly make a jury demand to take advantage of that right. You must normally file your demand for a jury trial within ten (10) days after your General Session case is filed in the Circuit Court. If you do not meet this deadline, you lose your right to a jury trial, and your case will be heard by a judge only.

If you do not want a jury trial, a Circuit Court judge will hear the issues of your case again and render his or her decision without regard for what the General Sessions Court decided (this is called de novo review, and the facts will be presented again in a fresh way to the new judge). In many cases, if one or more of the parties is represented by counsel, the Circuit Court judge may hear motions that determine the outcome of your case and there might not even be a need for a trial.

If you win your case in General Sessions Court and no appeal is taken, then the General Sessions' decision or judgment becomes final. If you are awarded money in a General Sessions judgment and that becomes final, if you are not paid that money by the person or company you sued, then you will have to try to collect your judgment in a lawful manner. If the person against whom you obtained a monetary judgment has a job, you might be able to garnish that person's wages. If the person against whom you

obtained a monetary judgment has a bank account, you might be able to file a bank levy against the money in that person's bank account. You can seek a garnishment or a levy for your judgment by filing certain forms with the Court Clerk.

If you lost at trial and you owe a party money as a result of a General Sessions judgment, the General Sessions Court might permit you to make periodic payments until the judgment is paid in full. The General Sessions Court clerk usually has a form for you to fill out and file if you want to ask the court to be permitted to make payments toward a judgment (This is known as a motion to pay by installment). If you fill out and file a document asking the court to permit you to make payments, you must appear in court when your matter is set for the court to consider your request to make payments toward a judgment.

Even though General Sessions Courts are generally thought of as courts for smaller claims and even though you generally have the right to represent yourself in court, you cannot represent others in court unless you are licensed to practice law or have another legal basis that permits you to act as though you are that person. For example, a real estate agent or person managing a rental property for an owner cannot generally appear in court without the owner to represent the owner's interests. Similarly, if you own a company and if your company is a corporation or a limited liability company, you will need an attorney to represent your company in court because your company is a legal entity that is separate from you. If your legal matter is complicated or involves the opinions of experts, you may want to consult with an attorney to help you in your matter. If you decide to represent yourself in court and lose, you may spend more money hiring an attorney to handle your appeal than you would have spent had you hired an attorney to represent your interests in General Sessions Court in the first place.

# What should I do if I am sued?

You may have been sued or you may be expecting to be sued. If so, you may be wondering what to do when you are served with legal papers.

A lawsuit begins when a plaintiff or petitioner (generally, a "Plaintiff") files a document in court known as an action, civil warrant, complaint or petition (generally, the "Complaint"). A Complaint should be a simple, concise statement of the facts giving rise to the claims being made and the legal basis for those claims. If you have been sued, you are typically referred to as a defendant or respondent (generally, the "Defendant"). A Defendant should expect to be given a copy of the Complaint by a sheriff's deputy, by a private process server, by mail and sometimes by a posting on a door, tree or building. In addition to the Complaint, a Defendant should expect to receive a summons which is a written notice that the Defendant is required to appear in court in the proper manner to answer the Complaint. Sometimes the summons is contained in the same document as the Complaint and sometimes the summons is its own separate document. When a Defendant is properly given a copy of the Complaint and summons, that Defendant has been served with process of the lawsuit and that Defendant is deemed to be aware of the fact that a lawsuit is pending in court against him/her/it. If you become aware that a lawsuit has been filed against you, you should not try to avoid service of process. If a process server believes that a Defendant is attempting to avoid service of process, he or she may record that fact, report that fact to the court and the court may decide that the Defendant knows about the lawsuit anyway and that actual service of the Complaint and Summons is unnecessary for the court to proceed with hearing the merits of the lawsuit.

In a court of record such as a Circuit Court or Chancery Court, the Summons tells the Defendant how many days he/she/it has in which to file an answer or respond to the Complaint. In a court of no record such as a General Sessions Court, the Summons is usually contained on the Complaint itself and tells the Defendant the date, time and place where the trial will occur. If the lawsuit was filed in a court of record and the Defendant does not file an answer or properly respond to the Complaint within the time permitted, the Plaintiff suing the Defendant may be permitted to proceed with the lawsuit anyway and the court may grant a judgment by default granting the money or relief sought by the Plaintiff. Similarly, if the lawsuit was filed in a General Sessions court and the Defendant does not physically appear at the time of trial, a judge may enter a judgment by default against the Defendant. Once a judgment by default is entered against a Defendant, that Defendant may have waived his or her right to present any defense to the claims of the lawsuit.

If the lawsuit was filed in a court of record, any answer to that lawsuit must be carefully worded so you do not waive any defenses you may have and so the court is aware of all of the legal defenses you are claiming. If you have a legal defense that you do not disclose in your answer, the court may refuse to allow you to present that defense at trial.

If you believe you have a claim for money or relief against the person or company that sued you and you want to pursue your claim, in some instances you must file your claim against the Plaintiff so the court can decide all of the issues between the parties in one trial. If a Defendant files a claim against a

Plaintiff, the Defendant is making a counterclaim against the Plaintiff. A counterclaim is generally filed in a court of record when you file an answer to the original Complaint. In General Sessions Court, you may need to modify a General Session Court form to reflect that you are filing a counterclaim rather than a new lawsuit. In a court of record, a counterclaim is often asserted in a document called a "Counter-Complaint." A Counter-Complaint is similar to a Complaint in that it states the facts and legal basis of the person asserting the counterclaim. Once a Counter-Complaint is filed and served upon the original Plaintiff, the original Plaintiff is now also a Counter-Defendant and must answer the Counter-Complaint within the time allowed by law.

There are many legal rules that govern the filing and serving of legal documents and lawsuits. These rules are in place so everyone involved in a lawsuit can be assured that the rules will be applied equally to all that appear before the court and so the court can perform its job both efficiently and orderly. Most rules used in courts are available online at www.tncourts.gov. Many county courts have "Local Rules of Practice" which apply to that court as well. These are also available on the website www.tncourts.gov. If you plan on representing yourself at any level of court, you should always make yourself familiar with the rules that apply to that court and review those rules before you file any documents or appear in court.

If you have been sued, you may have a defense to that lawsuit and simply not know about it. Attorneys are trained to recognize legal defenses that may exist so they can help you assert those defenses if you are sued. An attorney can help you assert your rights and defenses. Attorneys are also trained in the rules of courts. Even if you do not believe that you can afford the services of an attorney to appear on your behalf at trial, it may be worth the expense of paying to consult with an attorney familiar with the issues presented by your lawsuit just so you can become aware of defenses you may have and what to expect to occur at trial. If you are unprepared at trial, you may lose an otherwise meritorious case and you may be faced with an appeal that might cost you more than you would have spent by hiring an attorney in the first place.

# Restraining Orders and Injunctions

If you want to take action to stop another person or company from doing something against your wishes or interests, it is necessary for you to get a special court order. There are three types of such court orders: a temporary restraining order; a temporary injunction; and, a permanent injunction.

A restraining order is one which immediately, but only temporarily, orders another person or company to stop an action against you or your property for a certain period of time. A temporary restraining order would, for example, stop a husband from bothering his estranged wife. A temporary restraining order becomes effective and binding on the party to be restrained at the time of service or when he is informed of the order, whichever is earlier. Every temporary restraining order granted without notice shall expire in fifteen (15) days or within the time period stated in the order, whichever is shorter. The order can be extended by the court or by agreement if the person the order is against consents. However, there is an exception for domestic relations or divorce cases. Temporary restraining orders in those cases may remain in force for whatever time the judge requires. The order usually remains in effect in a domestic case or divorce case until a special hearing can be held. Restraining orders, other than ones in divorce cases, usually have a hearing scheduled within fifteen (15) days of the time the judge signs the temporary restraining order.

To obtain a temporary restraining order, you must file a lawsuit and show an immediate need for a temporary restraining order which must be shown by your affidavit and/or your personal appearance before the court. If the judge is convinced that a need exists, he or she can usually sign a temporary restraining order without hearing from or notifying the other party.

When the special hearing is held, it is again up to the person who requested the temporary restraining order to convince the court that the order should continue in the form of a temporary injunction.

An injunction is a legal order which prohibits a person or a group from carrying out a given action. An injunction can also order a given action to be done.

A temporary injunction serves for a short time period. Its purpose is to keep things as they are until the case can come to trial and a final judgment can be made in court. A temporary injunction cannot be issued without notice to the adverse party.

A temporary injunction is normally used only when a permanent injunction will also be requested at trial. When filing a lawsuit for a temporary injunction, you must say that you are also seeking a permanent injunction.

If you are asking the court for a restraining order or temporary injunction, it may be necessary for you to post or pay a bond either by cash deposit or in the form of a surety bond to provide a fund to compensate the other party for any damages in the event it is found that the restraining order or temporary injunction should not have been granted. The judge issuing the restraining order or temporary injunction usually determines the amount of the bond. If a permanent injunction is granted after the judge has heard all the facts in the case, the bond is returned or canceled.

A permanent injunction is final and usually is made when there is no way for the judge to determine money damages to compensate the injured party, and to prevent a continuing wrongdoing and irreparable harm. An example of this would be a case where there have been repeated trespasses on a person's land.

If the situation involves threats or violence between persons who have been married, lived together, have a child together or a stalker, you may be entitled to an order of protection. Petitions for orders of protection are filed in either Fourth Circuit or Chancery Court. Petitions are available at the clerks' desks of either court. There is no charge for filing the petition. Once the petition is filed out, a chancellor or judge reviews the allegations and may grant a temporary order of protection, which is served on the other person. A hearing is then scheduled where the parties testify about what happened. The order may continue the for one year, and it may be extended. The person subject to an order of protection may not harass, threaten or even contact the person who took out the order. Violation of the order of protect may result in immediate arrest and time in jail.

# What If I Cannot Afford Court Costs?

You are not denied the right to use the courts simply because you cannot afford the court costs. If you cannot pay these costs, you may still sue and defend yourself in civil actions including divorces. Anyone can apply to the court to proceed "In Forma Pauperis." Although that phrase means "In the Form of a Pauper," you don't have to be completely destitute or without funds to use this procedure.

Ask the clerk at the courthouse for the form called the Petition and Order to Proceed in Forma Pauperis form. The form is one printed page. If the court has questions about whether you are telling the truth about your finances, it can require written testimony or hold a hearing; however, this is not usually required. Fill the form out and return it to the clerk. If you cannot afford the required fees, the court will typically let you go ahead in the lawsuit without paying the court costs. The court may require you to pay part of the fees and waive the remaining fees.

If you and your spouse are together on the same case and you are both trying to have the fees waived, the petition should contain both your names and be signed by both of you.

Fees which can be waived include: filing fees, litigation tax, jury fees, witness fees, and Sheriff's Office fees for serving summons. In some cases you can also have fees waived in the appeals court. If you are not sure, ask the clerk of the court.

What has been said so far applies to civil suits. If you are charged with a crime, the government pays all court costs unless you are convicted. In most criminal cases, if you are charged with having committed a crime and if you cannot pay an attorney, in most cases you will be provided with an attorney to represent you at little or no cost to you.

There is no exact definition of how few resources or assets you must have in order to have fees waived in civil suit. Courts have said that you need not be on welfare, but it must be more than just difficult or inconvenient for you to pay the fees.

If you don't have the money to pay fees now, but could save it up over a period of time, sometimes you may still proceed In Forma Pauperis.

If you have already paid some fees, and then don't have enough money to pay the rest, you can apply for waiver of the later fees. The fact that you had enough money in the past does not affect your right to proceed In Forma Pauperis in the future.

Even though you may begin your civil lawsuit without paying court costs, you may have to pay court costs later. For example, in a divorce or dissolution action, you may file for your divorce without paying court costs, but court costs may have to be paid at some point. Filing fees, litigation tax and other costs that are usually paid up front will be charged as court costs when the case is over. These costs are usually charged to the losing party if the case is decided by the judge or jury. If the case is settled by agreement, the agreement should state who pays which fees.

# What You Should Know About Being a Witness

If you are called to be a witness in a trial, there are several things you should know. The most important thing is to remember that you are sworn to tell the truth. Even if the truth is not to the advantage of the person for whom you've been called to testify at trial, the law requires that you tell the truth anyway. Don't try to stop and figure out if your answer is going to help or hurt one side or the other. Just answer the questions asked of you to the best of your knowledge and ability.

Don't memorize your story. Juries may not believe a witness whose story seems memorized or rehearsed. Again, just tell things the way you remember them. Don't exaggerate. Stop instantly if the judge interrupts you or if an attorney objects to your testimony. Don't try to sneak in an answer.

Think carefully about the questions you are asked. Listen carefully. An attorney or party questioning you may be very polite as he or she cross-examines you, but his or her job is to question your testimony or your reliability as a witness.

Make certain you understand the question being asked of you. Ask to have the question repeated if you don't understand it or if you don't believe you heard the question fully. When you answer, give a thoughtful answer. Don't permit yourself to be rushed into answering. On the other hand, don't take so long to answer that it seems as if you are trying to make up an answer to get around answering truthfully and directly.

When you are being questioned, explain your answers if necessary. If you can answer the question with a "yes" or "no," you should do so. Answer simply and directly only the question you were asked, then stop talking. Don't volunteer any information that isn't asked. It may seem like you are being asked tricky or misleading questions. If you do not believe you can answer the question the way it was asked, make the judge aware of that fact.

Don't lose your temper. Testifying for any length of time is tiring. You may begin to experience fatigue while answering questions or you may feel tired, cross, get nervous or get angry. You may start to give careless answers and feel yourself willing to say anything just to get off the witness stand. If you feel any symptoms of fatigue just recognize that they're there and work at being as alert and attentive as possible.

Your appearance and the way you act in court are important. The judge and/or jury will gauge your honesty based on your actions and attitude while you testify. You are expected to show respect for the court and for the legal process you are participating in. Wear clean clothes and dress conservatively. Don't chew gum. Stand or sit up straight while you take the oath. Pay attention and say "I Do" clearly. Sit up straight in the witness chair, and always speak loudly enough so that everyone in the room can hear you.

Be serious about what you are doing and don't joke or talk about the case anywhere in the courthouse. Look at the judge or members of the jury when you talk and try to speak to the judge or jury just as you would to any friend or neighbor.

Remember to keep calm and tell the truth to best of your ability. Be as open and as serious as you can about what you are doing. Whether a judge or jury is deciding the case, the outcome of the case often depends on what the trier of fact hears from a witness on the stand. If you are a witness, your facts and knowledge are likely important to the case being heard.

# Jury Service

This page applies to jury service in most of the Circuit, Criminal and Chancery courts of Tennessee.

You may receive in the mail a jury summons from the court indicating that you are being called to serve as a prospective juror. This means that your name was drawn from the current list of registered voters or licensed drivers in the county where a trial is about to occur.

All names are selected at random from these sources, which provide the jury system with a fair cross-section of the communities that it represents. At all stages of selection, the jury commissioner must ensure that the selection process represents a random cross-section of qualified persons residing within the county where the trial is to occur. As a necessary part of this requirement, no person or persons can be selectively included or excluded from the list of qualified jurors.

The Tennessee Code spells out the minimum requirements for a person competent to act as a juror. Some of the primary requirements are that you must be a citizen of the United States, of the age of eighteen (18) or older and you must reside in your electoral district for a period of at least twelve (12) months prior to service on a jury. You may be disqualified from jury service if you have been convicted of or pled guilty to a felony, to perjury, or to the subordination of perjury.

Other requirements are that you be mentally competent, of ordinary intelligence and not incapacitated or a habitual drunkard. You are not automatically excluded solely because of imperfect or loss of sight or partial or total loss of hearing. If you believe there is a medical reason you should not serve as a juror, it may be necessary to submit a supporting statement in writing from your doctor to establish that fact.

The final requirement for jury duty is that you be able to read and speak simple English.

You will be summoned to serve on either civil or criminal cases depending on the court issuing the summons. Circuit court and Criminal court handle the method jurors serve differently and you will be instructed as to the procedure for your court on the day you are summoned to appear. Each time you come in as a prospective juror, you can expect to go into the courtroom and go through the jury selection process. If you are not selected as a juror on the date summoned, you are excused and given instructions on when you need to return, if at all.

If you cannot serve during the scheduled jury impanelment period, it may be possible to excuse you to be summoned at a later date. It is expected that if your obligation is deferred, you will make appropriate arrangements so that you can serve during a later jury impanelment period. Only the judges may excuse a prospective juror.

For each appearance as a trial juror, you are entitled to the nominal fee for each day of attendance.

Remember, jury service is your right and duty as a citizen. Failure to respond to a jury summons could result in sanctions against you by the court. Your assistance and participation is needed in order that the courts may operate in the most efficient manner possible.

# What is a Deposition?

A deposition is one of the many tools lawyers use to gather information before a trial. In fact, in many ways, a deposition is like a trial. If you are called or subpoenaed for a deposition, you are being called to testify about your personal knowledge of facts that relate to a lawsuit.

You can expect the following people to be present at a deposition: first, an officer of the court (usually a court reporter) who is authorized to give oaths; second, attorneys who represent either side of the lawsuit; and, third, the parties to the lawsuit if they choose to attend. You may also have an attorney to appear with you at your deposition.

At your deposition, you can first expect to be sworn in by the court reporter or court officer. The oath that you will be given is the same oath to tell the truth that witnesses are given in any trial. After taking the oath, the attorney who requested the deposition will then begin to ask you questions concerning your knowledge of the facts involved in the lawsuit. You are under an obligation to answer these questions truthfully and to the best of your knowledge, unless you feel that by answering a question you may be exposing yourself to criminal liability. In that case, you may refuse to answer the question on the grounds that your answer may tend to incriminate you. (This is a right guaranteed to you by the 5th Amendment to the U.S. Constitution). Speak clearly so that the court reporter can understand you and accurately record your testimony. If one of the attorneys makes an objection during your testimony, stop talking and wait for further instruction as to whether you should answer the question.

If you are represented by an attorney, another attorney taking your deposition may not ask about any communications between you and your counsel. Such communications are protected from disclosure by the “attorney-client privilege”.

Within ten (10) to thirty (30) days after the deposition is over, you may have the opportunity to review a written transcript of your testimony, unless you waived that right. It is important that you review your deposition carefully and make sure that there are no errors. If you are called to be a witness at trial and your testimony at trial differs from your testimony in the deposition, your credibility as a witness may be injured. Once you have read your testimony and corrected any inaccuracies, you will then be asked to sign your deposition. You are always entitled to keep a copy of your deposition for reference, if necessary.

# What is a Subpoena?

A subpoena is a written court order requiring the attendance of the person named in the subpoena at a specified time and place for the purpose of being questioned under oath concerning a particular matter which is the subject of an investigation, proceeding or lawsuit. A subpoena is issued by someone authorized by law, usually by the attorney for a party to a lawsuit, but very often issued by someone authorized to conduct an investigation such as the State Attorney General or local District Attorney.

In addition to requiring the attendance of a person, a subpoena may also require the production of a paper, document or other object relevant to the particular investigation, proceeding or lawsuit. Usually, a subpoena directs that the person named appear and give testimony in open court. However, certain subpoenas require the person to appear before a person or tribunal other than a court, such as a grand jury.

A subpoena will identify the person who issued the subpoena as well as the general nature of the proceeding to which it relates, although not necessarily the precise subject matter of the proceeding. If you are served with a subpoena, you cannot ignore it. If you do, you risk being held in contempt of court, even if the subpoena was not signed by a judge.

When you are served with a subpoena, you must do one of two things. You must either comply with the subpoena or, if you have an objection, you must apply to the proper court for permission to vacate or modify the subpoena. Such an application would ordinarily require the services of an attorney, but the law may not require certain professionals, such as medical doctors, to appear in answer to certain subpoenas.

In considering what to do if you are served with a subpoena, you should keep two things in mind. First, if you feel that you may be the target of a criminal investigation or that your testimony may implicate you in criminal activity, however remote that possibility, you should immediately consult an attorney. Second, if there is any question in your mind about the validity of the subpoena, you should consider challenging the subpoena by applying to the proper court before you appear at the time and place designated by the subpoena.

If your only objection to the subpoena is that it may be difficult or impossible for you to appear at the time and place indicated, you should contact the attorney or person who issued the subpoena to let them know. Usually that person's name, address and telephone number will appear at the bottom of the subpoena. It may be possible to postpone your appearance or to arrange a more convenient time for you to appear. If other arrangements cannot be made or your appearance will jeopardize your health or your employment, you should seek the services of an attorney.

# What are the differences between a Civil and a Criminal Case?

Our legal system recognizes two different kinds of legal cases: civil and criminal. A civil case is one in which a person who has a complaint may bring a legal action to protect his or her interests or collect money damages. The person claiming relief is called a plaintiff, petitioner, or complainant. The person against whom relief is sought is called a defendant or respondent. In a criminal case, the federal, state, or municipal government brings the action in the name of its citizens against a defendant who has been accused of committing a crime. Thus, criminal cases are prosecuted on behalf of the people of the State of Tennessee or all U.S. citizens for example. The people are represented by a prosecuting attorney such as the local county District Attorney General, the Attorney General for the State of Tennessee or the United States Attorney General.

In a criminal case, the defendant is charged with a crime against society such as murder, burglary, robbery or theft. The legal action is initiated by the prosecutor who decides whether to bring charges and what charges to bring. In a criminal trial, a prosecutor must prove the defendant's guilt beyond a reasonable doubt. While this does not mean proof beyond all possible doubt, it is a higher burden of proof than that required in civil cases.

In a civil case, it is the individual plaintiff who feels wronged or injured who decides whether to file a civil suit. When damages are sought, the plaintiff decides how much to demand in damages, although the judge or jury will decide whether and how much a plaintiff can recover. In a civil case, the plaintiff cannot seek to have a defendant jailed unless the defendant has violated a court order. In a civil case, the plaintiff must prove his or her case by a preponderance of the evidence. This means the plaintiff has proven their case “more likely than not.” This is a lower standard of proof than the “beyond a reasonable doubt” standard for a criminal trial.

In a civil case, anyone with knowledge of facts relevant to the case may generally be required to testify as a witness in court and any witness has a right to appear with an attorney. In a criminal case, the defendant is not required to testify but still has the right to legal counsel. Even if the police or sheriff merely wants to question someone before any criminal charges are filed, that person has the right to consult with an attorney before speaking to the police. If he or she cannot afford an attorney, the court will appoint one free of charge except in the case of certain minor offenses such as traffic violations when the prosecutor is not seeking time in jail as punishment.

If you are involved in either a civil or criminal case, make sure you obtain legal advice. You should not hesitate to contact an attorney when you need professional legal help.

*since only slight changes in facts change the applicable advice. If you have a legal problem or question, please consult an attorney.*

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