

CHAPTER 491

CONCILIATION COURTS

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491.01 CONCILIATION AND SMALL DEBTORS COURTS. When the governing body of any city, whether governed by a home rule charter or not, shall by resolution declare that it is expedient that the judge of the municipal court of such city, or one of them in case there be more than one such judge, shall act as a conciliation judge and cause a copy of such resolution to be filed with the city clerk of such city, the judge of the municipal court of any such city, or in case there be more than one such judge, then one of them, to be selected as hereinafter specified, shall thereafter, as a judge of the municipal court of such city, act as a court of conciliation and while so acting he may, for convenience, be designated as a judge of conciliation and shall have and exercise the rights, powers, and duties hereinafter by this chapter granted and conferred. The governing body of any such city may at any time rescind such resolution.

In cities where there is but one presiding judge of the municipal court the governing bodies of the city or cities may, by resolution, designate additional compensation to be paid to the presiding judge and the clerk of the court for their services in the conciliation court.

[1921 c. 317 s. 1] (1877)

491.02 DUTIES; POWERS. The conciliation judge shall have all powers of a court of conciliation and shall exercise all the special powers conferred by this chapter. The conciliation court shall be open at such times as shall be fixed by rule of the municipal court for the hearing and determining of controversies submitted to such court in accordance with the provisions of this chapter. When such judge is not acting as such conciliation court, under this chapter, he shall act as a regular judge of the municipal court. No costs shall be taxed to either party in this court, but the judge may include in the settlement and judgment such actual disbursements of the prevailing party as are now allowed by law in civil actions, and as may seem to him just and proper, or he may refuse to include any disbursements if same shall appear just and proper, under the circumstances. The clerk and court officers of the municipal court shall be, respectively, ex officio clerk and court officers of the conciliation court, but neither the clerk nor any of these officers shall charge any fee for filing or serving any paper in any case brought under the terms of this chapter, while the same is pending in the conciliation court. Causes in this court shall be conducted by the parties without attorneys, but a removal to the municipal court, as provided in this chapter, may be taken through an attorney at law.

[1921 c. 317 s. 2] (1878)

491.03 PROCEDURE. Any person having a claim within the jurisdiction of the municipal court may appear before the conciliation judge and there state his cause of action without pleadings and without formality. If such cause of action is within the jurisdiction of the municipal court, the judge shall enter the same upon his docket and immediately summon the defendant, orally, or by telephone, or by registered or unregistered United States mail, or by personal service of written summons, as provided by law for service of summons in the district court, stating the amount and nature of the claim, and by such summons shall require the defendant to appear before the judge in person, and not by attorney, or, if a corporation, by officer or agent, and not by attorney, at a time certain at as early a date as the circumstances of all the parties will permit, and specifying that if he does not so appear judgment will be taken against him by default for the same, or relief demanded.

Action in the conciliation court may also be commenced by the plaintiff appearing before the clerk thereof and subscribing to and verifying a claim, which claim

shall contain the name and place of residence of plaintiff and the name and place of residence of defendant, and a brief statement of the amount and nature of the claim and the time when the same accrued. The clerk, when requested, shall draw up the claim and when so subscribed and verified immediately file the same, and set down the same for hearing before the judge at a time certain as soon as possible and not more than ten days from the date of the filing, and immediately notify the defendant, in one of the methods above recited, of the name and residence of plaintiff and the nature and amount of his claim and requiring defendant to appear personally before the judge at that time, and in case he so fails to appear judgment will be taken against him for the amount of relief so claimed. The judge may, by order, require all cases brought to the court to be so begun before the clerk. At the time so set the judge shall hear the statements of the respective parties, and use his best endeavor to have the parties settle their controversy then and there by agreement.

The judge may also hear any witnesses produced by either party. If the parties agree on a settlement of the controversy, the judge shall reduce such settlement to writing in his docket. The written agreement shall provide that all the parties abide the judgment to be entered thereon without removal or appeal or further litigation, and may be signed by all the parties thereto, but whether or not so signed the settlement, when so agreed upon and so entered and countersigned by the judge, shall have all the force of a judgment of a court of record, and if so ordered by the judge shall be docketed by the clerk of the municipal court in the same manner and enforced as the judgment of the municipal court, but the judge, in case of a money judgment, may by its terms provide for the satisfaction of the same by the payment of the same into the municipal court, either in a lump sum or in instalments in such amounts, and at such times, as to the judge, under all circumstances of the case, may seem just and reasonable, or the judge may retain jurisdiction for the collection and satisfaction of the judgment, without execution.

In case the controversy is as to the ownership or possession, or as to both the ownership and possession, of personal property where the value of same does not exceed the sum of \$50.00 and the action is commenced by the plaintiff filing, as herein provided, with the clerk a sworn statement as to his ownership, or right of possession, or both, of such property, the court in its discretion may, by order, direct the officer of the court to take possession of such property immediately, and to hold same subject to the further order of the court, without the giving of any bond.

[1921 c. 317 s. 3] (1379)

491.04 JURISDICTION; JUDGMENT. In case the parties brought before the conciliation court, in the manner provided in this chapter, do not agree upon the judgment to be entered, then, in case the amount in controversy, whether the claim of the plaintiff or a counter-claim on the part of the defendant, exceeds the sum of \$50.00, and the judge is satisfied the counter-claim is in good faith, the case shall be forthwith dismissed and dropped from the docket, without prejudice, but if the amount involved in controversy be \$50.00, or less, or if the judge is of the opinion that the counter-claim, if any, therein in excess of \$50.00 is not in good faith, he shall retain jurisdiction and proceed summarily to hear and determine the cause and to enter judgment on his docket. The conclusion of the judge as to the good faith of any counter-claim shall be final and conclusive on all parties for the purposes of the jurisdiction of the court. In case such judgment is not removed, by demand of either party, to the municipal court within five days after the entry thereof, as provided in this chapter, and the judgment remains unsatisfied, the judgment, on order of the judge shall be docketed in the municipal court by the clerk and shall thereupon be, and be enforced as, the judgment of the municipal court, or the judge may retain jurisdiction for the collection and satisfaction of the judgment by payment to him, but no execution shall issue from the conciliation court.

By its terms, the judgment may provide for its satisfaction by payment into court, either in a lump sum or in instalments and in such amounts and at such times as to the judge may under the circumstances of the case seem just and reasonable.

The conciliation court shall be subject to the direction of the judge thereof, but the judges of the municipal court may prescribe rules as to procedure, methods of

producing evidences, and general conduct of the case, and the trial thereof, under the provisions of this section, and for carrying out all the provisions of this chapter.

[1921 c. 317 s. 4] (1980)

491.05 DEFAULTS; VACATION. In case the defendant duly summoned, as provided in section 491.03, shall fail to appear at the times set for hearing, the conciliation judge may hear the plaintiff and enter a judgment by default, or he may fix a later date for such hearing in accordance with what seems reasonable and just to the judge under the circumstances. Due notice shall be served on defendant, by mail, or telephone, or written notice, as provided in this chapter, for the purpose of this hearing, of the time of the postponed hearing, or that judgment has been entered against him by default. If judgment by default is entered, the judgment debtor may appear before the judge, within ten days after the date of such notice of judgment, and upon showing to the judge good cause therefor and paying to the judge for the benefit of plaintiff the sum of \$2.00, shall have the judgment set aside. The judge shall then hear the cause at once, if plaintiff is also present, or set same for hearing as soon as possible, after notice is given to both parties in the manner provided in this chapter. If the judgment debtor fails to appear within ten days after notice of such default judgment or fails to appear at such second date set for hearing in either case judgment by default shall stand or be entered, as the case may be, and shall be as to its terms and method of enforcement as provided in section 491.04. If the plaintiff fails to appear at the time set for any hearing the action may be dismissed, or continued at the discretion of the judge. Nothing in this chapter shall be construed to limit the power of the court at its discretion to relieve against mistake, inadvertence, surprise, or excusable neglect as now provided by law.

[1921 c. 317 s. 5] (1981)

491.06 APPEAL. Any person aggrieved by the judgment rendered by the conciliation judge, under section 491.04, and who is entitled to a jury trial under the constitution, may have the case removed to the municipal court for trial by jury, but no case shall be so removed unless within five days after such judgment is rendered, and after the clerk shall have mailed notice of the entry of the judgment to each of the parties thereto, which notice shall be mailed immediately and shall specify the day on which the time for removal of the cause will expire, the party so removing same shall do the following things:

(1) File with the judge a bond executed by the party demanding the removal, his agent or attorney, to the adverse party, in a sum sufficient to secure the amount of such judgment, and costs in such municipal court, with sufficient surety to be approved by the conciliation judge, conditioned that the party so removing same shall prosecute the case with effect in said municipal court and abide the order of the court therein and pay any judgment that may be rendered against him therein;

(2) File with the conciliation judge an affidavit of the remover, his agent or attorney, stating that the removal is made in good faith and not for the purpose of delay;

(3) Serve on the opposite party a written demand of such removal in the manner now provided by law for the service of summons in the municipal court and file with the judge such original demand, with proof of service thereof; such original demand or proof of service shall show the office address of the attorney of each party, that has such attorney, and the residence address of the party so removing, if he has no attorney, and the residence address of each of the opposite parties who is served with such notice; and

(4) Pay to the conciliation judge the sum of \$5.00 for costs and jury fee in the municipal court.

Within three days after all of these things have been done the conciliation judge shall deposit the \$5.00 with the clerk of the municipal court and file with the clerk all of the papers, together with a copy of the judgment and a certificate setting out in general terms the claims of the parties thereto before him and the issues tried, and the case shall be tried in the municipal court upon the issues so certified or upon such others as may be stipulated by the parties or ordered by the municipal court or such issues as either party shall demand, in writing, at the opening of the trial, and a copy of which he has served on the opposite party at least five days before the trial, with a notice that such demand will be made.

When these papers are so filed in the municipal court the judgment shall be thereby vacated and the case shall be there pending and shall be by the clerk set

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down for trial on the first jury trial day at the foot of the calendar of that day, occurring not less than ten days after the papers are so filed in the municipal court, and shall stand for trial without service of any notice of trial or note of issue whatever, except that at least nine days prior to the trial day the clerk shall mail to each party and each attorney in the case whose address appears in the demand for removal or whose address is known, notice that the case is so set down for trial.

If the judgment creditor remove the case and the final judgment rendered is not increased in his favor, at least \$10.00 over the former judgment, he shall recover no costs in the municipal court, and there shall be entered against him in the judgment an attorney's fee in favor of the adverse party of \$10.00, either by reducing the judgment in his favor in that amount; or, if the amount found in his favor be less than \$10.00, by an affirmative judgment against him for the difference. If the judgment debtor remove the case and final judgment is rendered against him, he shall pay the adverse party, in addition to the amount and costs, an attorney's fee to be entered and included in the judgment, as follows: \$5.00, in case the judgment so removed was \$5.00, or less, and the final judgment, aside from costs, is not reduced from the judgment at least \$3.00; \$10.00, in case the judgment so removed was \$10.00, or less, and the final judgment, aside from costs, is not reduced at least \$5.00; \$15.00, in case the judgment so removed was more than \$10.00, and the final judgment, aside from costs, is not reduced at least \$10.00. There shall be no appeal from the municipal court on any action brought there on removal from the conciliation court, but in such case the judgment of the municipal court shall be final.

[1921 c. 317 s. 6] (1382)

491.07 ANY MUNICIPAL JUDGE SHALL PRESIDE WHEN. In case absence, sickness, or other disability of the conciliation judge shall prevent him from performing the duties of his office, as hereinbefore prescribed, the presiding judge of the municipal court shall designate one of the other judges of the court to perform the duties of such conciliation judge during his absence or disability.

[1921 c. 317 s. 7] (1383)

491.08 NOT RESTRICTIVE. Nothing in this chapter shall prevent any person from commencing or prosecuting an action in any court as now provided by law, and nothing in this chapter shall prevent the parties from waiving a jury in any case when called for trial after having been removed to the municipal court, as provided by this chapter.

[1921 c. 317 s. 8] (1384)