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| **Small Claims Questions** |

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| **Katrina Martin**<MartinK@charlevoixcounty.org> | Fri, Jul 7, 2017 at 12:14 PM |
| Reply-To: madcm@googlegroups.com  To: "madcm@googlegroups.com" <madcm@googlegroups.com> | |
| |  | | --- | | Hello all:   I have 2 separate cases with 2 separate issues that I could use some suggestions on.  **First case**- in reviewing the Affidavit/Claim prior to court, it appeared to me that venue was not likely appropriate in my county.  However, Df does not show for the trial.  Plaintiff (whom is an attorney) questions the court’s authority to challenge venue when no objection to venue has been raised by the DF.  So, my question is, do you see any problem with the court in a small claims matter raising venue as an issue when the DF does not do so himself?  **Second case**- doctor sues patient for non-payment of services rendered.  Doctor’s office has all of its patients sign a form agreement indicating, among other things, that if payment is not made, that the patient agrees to pay  “all costs of collection.”  Doctor’s office has an administrative assistant and one of her jobs is collections.  Her collections efforts consist of making a few phone calls to the patient seeking payment and then verifying that the address the doctor’s office has for the patient is still valid.  Thereafter, Doctor’s office then takes the patient bill and adds 40% to it and writes on the patient bill an amount that is derived as a “40% collection fee”.  Doctor’s Office also charges a monthly finance charge, which is tacked on each month, in addition to, the 40% collection fee.  Has anyone ever seen this type of agreement with this language and otherwise then had a doctor’s office add a collection fee for its own collection efforts, and if so, have you awarded the collection fee amount as the doctor’s damages for non-payment of services rendered?  Thanks!!  Katrina Martin  Attorney Magistrate  90th District | | |

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| **Wiewiora, John**<WiewioraJo@co.muskegon.mi.us> | Fri, Jul 7, 2017 at 1:07 PM |
| Reply-To: madcm@googlegroups.com  To: "madcm@googlegroups.com" <madcm@googlegroups.com> | |
| |  | | --- | | As to the first case, the question of venue is much like the question of jurisdiction and is properly raised by any party or the court. If venue is not proper for your court, you should deny the claim regardless of the defendant appearing. I have done the same when venue is not proper for a criminal charge for which an arrest warrant is being sought.  Second, I have not seen such an agreement before. Unless the agreement sets out that the collections fee will be a certain percentage of the amount due or a set amount of money, then the actual cost of any collection services must be shown by the plaintiff, much the same as how court costs assessed need to be justified. If all that is going on is that a staff member spent 20 minutes sending correspondence to the defendant or making phone calls, that does not justify a $400 fee on a $1000 bill. It should instead be equal to one third of the staff member’s hourly wage. | | |

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| **James Patrick Brennan**<jbrennan@ferndalecourt.com> | Fri, Jul 7, 2017 at 1:44 PM |
| Reply-To: madcm@googlegroups.com  To: madcm@googlegroups.com | |
| |  | | --- | | Hi Katrina.  In the first case, did the Defendant ever accept service? If so, I believe you could make the argument that he had submitted to the jurisdiction of the Court.  Your Plaintiff wants the Court to enter a judgement based upon Defendants failure to appear and let him appeal the judgment to claim improper venue. This is an alternative. The other alternative, a dismissal, will bring a certain amount of grief. Plaintiff will mention it to your chief judge.  Remember this case isn't going away. The Plaintiff will be back for discovery and collection.  I don't think you can go wrong running it by your chief judge.  I have had the second case. A trucking company entered into an employment contract with the driver, making him an independent contractor. The trucking company deemed a clerk as a "paralegal" and charged exorbitant amounts for collection proceedings, including $90/hr court time. I tried to eliminate these fees, along with overcharges and other fabricated costs. Clearly not a case of clean hands on the Plaintiff's part.  In the end, I allowed actual contracted expenses and normal costs( filing fees, service fees, ect). There was no appeal and now the case is back before me for a creditor's exam.  Hope this helps. Have a great weekend! | | |

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| **James Pahl**<jbpahl0824@gmail.com> | Fri, Jul 7, 2017 at 1:54 PM |
| Reply-To: madcm@googlegroups.com  To: MADCM <madcm@googlegroups.com> | |
| |  | | --- | | Katrina:  First case:  I question venue items in my small claims, even in default.  I use MCL 600.8411(2) as my authority:    **600.8411 Removal; waiver; hearings; manner of conducting; no jury or verbatim record.**  (2) In hearings before the [small](http://www.legislature.mi.gov/%28S%28eqa2m1ufcs1qtp1wlddyycvj%29%29/mileg.aspx?page=getobject&objectname=mcl-600-8411&query=on&highlight=small%20AND%20claims" \l "top" \t "_blank) claims division, witnesses shall be sworn. The judge shall conduct the trial in an informal manner so as to do substantial justice between the parties according to the rules of substantive law but shall not be bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications, the sole object of such trials is to dispense expeditious justice between the parties. There shall be no jury nor shall a verbatim record of such proceedings be made.  Second Case:  I would rule usurious interest rates and not allow any of the collection or finance charges.  Jim  55th | | |

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| **danieljgoulette via MADCM**<madcm@googlegroups.com> | Fri, Jul 7, 2017 at 2:04 PM |
| Reply-To: madcm@googlegroups.com  To: madcm@googlegroups.com | |
| |  | | --- | | First question:  **600.8415 Venue of actions.**  Sec. 8415.  (1) Except as provided in subsections (3) and (4), in districts of the first class actions in the small claims division shall be filed in the county in which the cause of action arose or in the county in which the defendant is established or resides or is employed. If there is more than 1 defendant, actions shall be filed in the county in which any defendant is established or resides or is employed.  Shall is mandatory, and the statute refers to "filing". I would question the venue, and if the statute is met, enter a default.  Second question:  Penalties on contracts are void in Michigan. Absent a showing of actual loss, I would deny the claims.  My two cents.........  Dan | | |

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| **Katrina Martin**<MartinK@charlevoixcounty.org> | Fri, Jul 7, 2017 at 2:02 PM |
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| |  | | --- | | Thanks for all the assistance everyone. Appreciate your collective wisdom.  On the first case, Yes, the Defendant accepted service.   -Katrina | | |