

## SMALL CLAIMS COURT IN ARKANSAS

*Note: The information contained in this publication is designed as a useful guide to remind you of your rights as a citizen of this state. You should not rely totally on this information because the laws are subject to constant change.*

In Small Claims Court, you can sue to recover for damages to personal property, money owed, or for delivery of personal property which is worth \$5,000 or less.

Each District Court in Arkansas has a division known as small claims court. Small claims courts are located in the same building and are served by the same personnel as district courts. Small claims courts are designed to allow individuals to settle certain disputes in court under relaxed rules of procedure and without attorneys. The small claims trial is a unique process; its purpose is to provide the full advantage under the law to the parties involved in a legal action, i.e., the plaintiff in a lawsuit who files the claim and the defendant who defends against the claim.

In order to bring a lawsuit, the plaintiff must file a legal form known as a claim. The claim should be kept simple so the defendant can understand, without the aid of an attorney, why he is being sued. A claim in the small claims division of district court lists:

1. The names and addresses of the plaintiff and the defendant'
2. The amount of money being claimed or a description of the property to be recovered;
3. A brief description of why the plaintiff believes the defendant owes him the amount of money or property claimed;
4. Notification to the defendant stating that he must answer the lawsuit upon receipt of the complaint.

The District Clerk may have a claim form which you can use to file your lawsuit.

### A. WHAT CAN YOU SUE FOR?

In small claims court, you can sue for different types of claims. These include matters of contract, recovery for damages to personal property, or for delivery of personal property that is worth \$5,000 or less. If you sue for money damages, the maximum amount you may claim is \$5000.

### B. HOW LONG MAY YOU WAIT BEFORE FILING YOUR COMPLAINT?

The length of time you have to file depends upon the type of claim you are bringing. If a written agreement has been broken or breached, you have five years after the date it was broken to file your complaint. If an oral agreement or contract, rent or injury to goods is involved, then you usually have three years to file your claim.

### C. WHAT ROLE DO ATTORNEYS PLAY IN THE SMALL CLAIMS COURT PROCEDURE?

No attorney or persons other than the plaintiff and the defendant are allowed to take part in the

filing, prosecution or defense of a case in small claims court. If a judge determines that a party is being represented by an attorney in a case pending in the small claims division of any district court, the case will immediately be transferred to the regular district court docket.

**D. IN WHICH SMALL CLAIMS COURT CAN YOU FILE?**

You can file a lawsuit in the county in which a defendant currently resides or in the county where he was to perform an obligation. When the action is for damage to personal property, you can file a lawsuit in the county in which the damage occurred or in the county where the defendant currently resides. In all other cases, you must file the action in the county in which the defendant resides.

**E. WHAT DO YOU FILE?**

The Arkansas legislature has devised the following form for use by you in filing a claim. Your district clerk may have copies of this form to make available to you. If the clerk does not have copies available, you may prepare a form like this one, complete it and file it with the clerk in order to start a small claims lawsuit.

<p><b>CLAIM FORM</b></p> <p>In the District Court of _____          State of Arkansas          _____          Small Claims Division</p> <p>Plaintiff _____          No. _____</p> <p>Vs. _____          Defendant</p> <p>Defendant's address: _____          _____</p> <p>Nature of Claim: _____</p> <p>Nature and Amount of Relief Claimed: _____          _____</p> <p>Date Claim Arose _____</p> <p>Factual Basis of Claim _____          _____</p> <p>_____          Signature of Plaintiff</p> <p>Plaintiff's Address: _____          _____</p>	<p><b>SUMMONS AND NOTICE TO DEFENDANT</b></p> <p>You are hereby warned to file a written answer with the clerk of this court within thirty days after you receive this claim and forward a copy to the plaintiff at the address above or a default judgment may be entered against you.</p> <p>_____          (Signature of Clerk or Judge)</p> <p>_____          District Court Clerk</p> <p>Address: _____          _____</p> <p><b>RETURN OF SERVICE</b>  <b>STATE OF ARKANSAS</b>  <b>COUNY OF _____</b></p> <p>I, _____, certify that I served the within Claim Form on the defendant, _____, at ____ o'clock ____ m. on _____ 20__, by _____.</p> <p>(Show manner of service)</p> <p>Name and Office, if any: _____          _____</p> <p>Subscribed and sworn to before me this _____ day of _____, 20____. (To be completed if service by other than a Sheriff, Constable, or Clerk)</p> <p>_____          Notary Public</p> <p>My commission expires: _____</p>
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F. CAN YOU APPEAL THE JUDGE'S DECISION?

Yes. The appeal must be filed within 30 days from the date the small claims judgment is entered on the district court docket by the Judge. An appeal does cost more money. You will have to pay another filing fee. If the small claims court rules against you and sets a specific amount for money damages, you may have to post a bond in that amount to appeal the judgment. All appeals are filed in the circuit court of the county where the small claims court is located.

G. IS ANYONE BARRED FROM SUING IN THE SMALL CLAIMS DIVISION?

Yes. No action may be filed in a small claims court by any collection agency, collection agent or any other person, firm, partnership, association, or corporation engaged/involved in the business of lending money with interest. Arkansas corporations, other than those which are classified as lending institutions, which have three or fewer stockholders; those in which 85% or more of the voting stock is held by persons related within the third degree; or those otherwise defined as closely held corporations may appear in small claims court provided they are represented by officers of the corporation.

H. MAY ONE OF THE PARTIES SEEK A TRANSFER OF THE CLAIM TO DISTRICT COURT?

Transfer of a small claims case prior to trial should be permitted only by the order of a judge. The case will be transferred to district court if any party is represented by an attorney. The case may be transferred to circuit court if the defendant countersues for more than \$5000.

Costs of presenting a claim with a small claims division of the district court varies from county to county. The minimum filing fees are \$50. There is a court technology fee of \$15. The cost of service of the complaint is extra.

Some courts have a mediation program. Mediation means the plaintiff; the defendant and a court-appointed mediator meet in an informal atmosphere to attempt to settle the dispute without going to court. The mediation program is free and voluntary. Both the plaintiff and the defendant must agree to mediate before a session can be scheduled. Mediation is also faster. Once an agreement is reached through mediation and the judge approves it, the conditions of the agreement are legally binding. If no agreement is reached, the plaintiff still has the right to pursue the matter in court.

The prevailing part - the person who wins the lawsuit - is entitled to costs of the action, including the costs of service and notices directing the appearance of a party and the costs of enforcing any judgment. The losing party will be ordered to pay these costs in addition to the amount of the judgment.

The first step required by the defendant is to file a written response on the answer form provided him with the service of the complaint. The answer form will be similar to the form shown below. The defendant must file this form within 30 days after the date of service. He must mail a copy of his answer and/or counterclaim to the plaintiff. After an answer and/or counterclaim have been filed, the parties will be notified of the trial date by the court.

ANSWER FORM	
In the District Court of _____ Small Claims Division	
_____	
Plaintiff	
Vs.	No. _____
_____	
Defendant	
Defendant's Address: _____	
_____	
Reason for Denial of Plaintiff's Claim: _____	
_____	
_____	
Nature and Amount of Affirmative Relief (if any): _____	
_____	
Date Affirmative Claim Arose: _____	
Factual Basis of Affirmative Claim: _____	
_____	
_____	
_____	
(Signature of Defendant)	

I. IS THE DEFENDANT ALLOWED TO FILE A COUNTERCLAIM OR A SETOFF?

Yes. A counterclaim is a claim for damages presented by a defendant in opposition to or deduction from the claim of the plaintiff. It arises from the same set of circumstances on which the plaintiff filed his lawsuit. If proven, the defendant's counterclaim will defeat or reduce the plaintiff's claim. A setoff is a special type of counterclaim which the defendant files against the plaintiff. A setoff arises from a different set of circumstances than those on which the plaintiff filed his lawsuit.

The defendant must file a counterclaim or setoff on the written form provided him with the service of the complaint. He must then see that the plaintiff and court clerk receive a copy of the counterclaim. The defendant must bear the cost of the filing and service of the counterclaim, if any, but if he wins in court he will be reimbursed these costs by the plaintiff.

J. WHAT HAPPENS IF A PARTY FAILS TO SHOW UP ON THE DATE SET FOR THE CLAIM?

1. If the defendant does not show.....

If the defendant does not show up or answer the plaintiff's complaint, the judge may enter a default judgment. A default judgment gives the plaintiff the damages he asked for in the complaint.

2. If the plaintiff does not show.....

If the plaintiff fails to show up on the date set the judge will dismiss the lawsuit. If the defendant has filed a counterclaim, the judge may award a default judgment to the defendant giving him the amount asked for in the counterclaim.

3. If the party who failed to show has a legitimate reason or excuse.....

If the plaintiff was not aware prior to the time set for court that he could not attend, he should submit a letter to the judge explaining why he was absent. If the judge determines that there is good reason shown, then the judge may allow the plaintiff to file again with an additional filing and service fee. If the defendant did not show up, he should write a letter to the judge explaining why he was unable to attend the trial and asking the judge to set aside the judgment. If there is good reason shown for the absence, the judge may set the default judgment aside and set a new court date.

#### K. WHO HAS THE BURDEN OF PROOF?

The necessity of one party to prove his case is referred to as the burden of proof. In the small claims case the burden of proof is upon the plaintiff (and on the defendant in a counterclaim.) He must prove his case by a preponderance of the facts presented. A preponderance of the facts means that the party with the burden of proof must present more convincing evidence in favor of his argument than is offered against his argument.

#### L. HOW TO PROVE YOUR CASE

1. Witness

Find all witnesses who can testify for you and bring them to court with you on the date specified. If they refuse to cooperate you can obtain a subpoena from the court clerk. A subpoena is a command to appear at a certain time and place to give testimony upon a certain matter.

2. Subpoenas

If subpoenas are requested, the plaintiff or defendant must provide a list of the witnesses' names, addresses and telephone numbers to the court clerk. There will be additional costs for serving each subpoena.

3. Evidence

Besides witnesses, you should find other evidence which will be helpful to you. You must bring all the evidence with you to the court if you wish for the judge to consider it in making his decision. Anything not brought with you will not be considered by the judge. If your case concerns injury to property, take a picture of it and bring the picture with you. Similarly, bring any receipts, cancelled checks or other documents that concern your case. If there is a witness who has told you something that is helpful to the claim, you cannot tell the judge what the witness said; the witness must be present to speak for himself.

#### M. HOW SHOULD I CONDUCT MYSELF IN THE COURTROOM?

You should direct all questions and statements to the judge. Do not talk to the other party.

The judge will ask for the evidence and the witnesses when he is ready. Do not present them until the judge asks for them.

You may not appear with an attorney.

Do not interrupt the judge. Avoid saying or doing anything to anger or irritate the judge or the other party. Remember, the judge is the one who makes the decision, so you should avoid causing any problems or conflicts that could sway opinion away from your side.

Show up prepared to present your side. The purpose of the small claims division is to present an inexpensive and speedy method of hearing your claim. Showing up prepared helps the judge to make a decision.

#### N. WHAT EFFECT DOES A JUDGMENT IN MY FAVOR HAVE?

The court only decides who should prevail in a given suit. Courts are only responsible for deciding disputes and not for enforcing their decisions. It is the winner's responsibility to make sure that the loser pays the amount the judge orders. If you have trouble collecting the amount the judge has found you are entitled to, there are two possible actions available to you - a writ of garnishment and a writ of execution.

#### O. WRIT OF GARNISHMENT

The writ of garnishment of wages will order an employer to take out a certain amount of the defendant's paycheck. The maximum is 25 percent. Sometimes a person's low income will prevent you from being able to garnish his wages or will allow you to receive only a small amount of money at a time. If this happens you may want to garnish the defendant's bank account.

The writ of garnishment is filed with the district court clerk in your area. Call the district clerk before you go to his or her office to see what you need to bring. You will need at least the defendant's place of employment and address and name of his bank if you are garnishing his bank account. You will also need to bring the fee necessary to file and process the garnishment. These costs will be added to the amount that the defendant owes in the judgment. However, you are responsible for paying these costs until they can be collected from the defendant.

After the writ of garnishment is filed, the employer or the bank of the defendant has 10 days in which to file and answer. Failure by the bank or employer to answer will result in the judge entering a judgment against the employer or bank for the full amount specified in the original judgment plus costs.

After filing, the plaintiff will receive a notice of when the money should come to the court. You must go down to the clerk's office upon that date and sign a statement to show that you received the money. The clerk will not call you when the money arrives. It is totally your responsibility to keep in touch with the clerk's office.

#### P. WRIT OF EXECUTION

This writ is more complicated than the writ of garnishment.

It is an order telling the sheriff to take the property of the defendant (t.v, stereo, car, etc.) and sell it at a public auction in order for you to get your money. You should only use the writ of execution if there is no other means of collecting your money because it is a very complicated process.

In order to get an execution against someone, you need to follow the steps below:

Go to the district clerk where you filed your suit and indicate you wish to file a writ of execution.

Fill out the form the clerk gives you, take it to the sheriff's process office and pay them the fee they require for delivery.

Stay in touch with the sheriff's office in order to keep informed about what is happening with the writ. The sheriff's office will not call you.

You must put up a bond with the court in case the item you execute against is not owned by the defendant. The bond will protect you and the sheriff's process office against being sued if the item sold belongs to someone else.

If you get this far without serious problems, the sheriff will take possession of the property. If a car is involved, he will have it towed in and stored while he publicizes the sale of the item. You must pay for storage fees, advertising costs and, if a car is involved, for towing charges, but you will be reimbursed for the costs from the proceeds of the sale.

## CONCLUSION

The preceding has been a brief analysis of the small claims divisions established in district courts throughout the state. The most important thing for you to remember is that the courts are here to serve your needs. If you have any questions, or are confused about any of the elements, or steps involved in filing a small claim, call the clerk at the district court in your area. They will be happy to assist you in matters concerning small claims courts.