

Garland County District Court  
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Hot Springs, AR 71901  
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Judges  
David Switzer, Division I  
Ralph C. Ohm, Division II

Small Claims Magistrate  
Gary Lax

## **SMALL CLAIMS COURT INFORMATION**

### **WHAT IS SMALL CLAIMS COURT?**

In Small Claims Court, you can sue to recover for damages for personal property, money owed, or for delivery of personal property which is worth \$5,000 or less. Small Claims Court is designed to allow individuals to settle certain disputes in Court under relaxed rules of procedure and without attorneys. Attorneys are not allowed in Small Claims Court.

### **WHAT CAN YOU SUE FOR?**

You can sue in Small Claims Court, for different types of damages, which are limited by a set dollar amount. You may sue on a matter involving a **contract** if the amount of dispute does not exceed \$5,000.00. You may sue to **recover personal property** where the value of the property does not exceed \$5,000.00. You may sue to recover money for **damage to personal property** as long as the amount sought does not exceed \$5,000.00.

### **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/contract** has been broken or breached, you have five (5) years from the date it was broken to file your complaint. If an **oral agreement/contract**, has been broken or breached, you have three (3) years from the date it was broken to file your complaint. **Recovery of personal property** or **damage to personal property**, you have three (3) years from date property was taken or damaged.

### **WHO CANNOT USE SMALL CLAIMS DIVISION?**

**No action may be brought in small claims court by a collection agency, collection agent, assignee of a claim or by any person, firm, partnership, association or corporation engaged, either primarily or secondarily, in the business of lending money at interest.** Arkansas corporations, other than those which are classified as lending institutions, which have three or fewer stockholder; 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.

Also, no attorneys may appear on behalf of another person or business in the small claims division. The entities listed above or persons with an attorney appearing on their behalf may file a claim in the Civil Division of District Court. The filing fee in the Civil Division is \$80.00.

If a Judge determines that a party is being represented by an attorney in a case pending in the Small Claims Division, the case may be dismissed or may be transferred to the Civil Division of District Court.

**No claim involving personal injury may be brought in District Court.**

### **THE COMPLAINT**

In order to bring a lawsuit, the Plaintiff must file a legal form known as a complaint. The complaint should be kept simple so the Defendant can understand, without the aid of an attorney, why he/she is being sued. The information you must provide on the complaint includes the name and address of the Plaintiff (person filing the complaint) and the Defendant (person being sued), the amount of money being claimed or a description of the property to be recovered, and a brief description of why the Plaintiff believes the Defendant owes him/her money or the property claimed.

### **WHERE DO YOU FILE?**

You can file a lawsuit in the county in which a Defendant currently resides, the county where the contract was to be performed, or the county where the property was damaged. If you are unsure of which county, file in the county where the Defendant resides.

### **HOW MUCH DOES IT COST?**

The filing fee is \$65.00 which must be paid at the time of filing. The cost of serving the complaint on the Defendant is extra. If the Plaintiff wins, the Defendant may be ordered to pay Plaintiff the filing fee and the cost incurred to serve the Defendant.

### **ONCE A CASE IS FILED, WHAT DO YOU DO?**

A Defendant must have notice that a complaint has been filed against him/her so that he/she may have the opportunity to respond. It is the responsibility of the Plaintiff to have the Defendant served with a copy of the complaint.

There are three acceptable ways to have the complaint served:

1. By having the Sheriff of the county where the Defendant lives serve a copy of the complaint. The fee is \$50.00 and is to be paid directly to the Sheriff.
2. By private process server. The clerk has a list of those approved by the Court to serve papers. The process server will charge a fee and must be paid to them prior to service.

3. By certified mail, return receipt, restricted delivery—fee is approximately \$10.04, unless the Complaint is too heavy for regular postage.

\*\*For additional information on service, see Arkansas Rules of Civil Procedure (Rule 4) and Arkansas District Court Rules.

### **WHAT HAPPENS ONCE THE DEFENDANT IS SERVED?**

Once the Defendant is served, he/she has 20 days to file a written response with the Court. If the Defendant is not a resident of Arkansas he/she has thirty (30) days to file a written response with the Court. This response must be in the form of an Answer, Counterclaim or Setoff. An Answer is the Defendant's response to the Plaintiff's Complaint. The Defendant may answer that he/she agrees with the Plaintiff's Complaint, agrees partially, or totally denies the Complaint. Defendant must mail a copy of the Answer to the Plaintiff.

A Counterclaim is a claim for damages by the Defendant against the Plaintiff and arises from the same set of circumstances on which the Plaintiff filed the lawsuit. A Setoff is a special type of counterclaim which arises out of a different set of circumstances than those on which the Plaintiff filed the lawsuit. If the Defendant files a Counterclaim or Setoff, it must be filed with the Clerk at the time of filing a written Answer to Plaintiff's complaint, and the Defendant must bear the cost of serving the Plaintiff with a copy. If the Defendant wins the case on Counterclaim or Setoff, the Plaintiff may be ordered to pay Defendant the filing fee and the cost incurred to serve the Plaintiff.

### **WHAT HAPPENS IF A PARTY FAILS TO SHOW UP ON THE COURT DATE?**

**Once the Court Clerk receives proof the Defendant has been served, a Court Date will be set.** If the Defendant fails to appear, fails to answer the Plaintiff's complaint after proof is shown that the Defendant was served with the Complaint and received a copy of the Trial Notice, the Judge may enter a default judgment for the Plaintiff based upon the damages presented to the Court.

If the Plaintiff does not appear the Judge may dismiss the lawsuit. If a Defendant has filed a counterclaim, the Judge may award a default judgment to the Defendant based upon the damages presented to the Court.

If a party is aware before the court date that he/she will not be able to appear, he/she should file a written continuance notice with the Court Clerk and ask for a continuance in writing. A continuance is postponement of the proceedings to a later day and time.

### **WHO HAS THE BURDEN OF PROOF?**

The duty of a party to prove his case is referred to as the burden of proof. In a small claims case the burden of proof is on the Plaintiff (and on the Defendant in a counterclaim). A case is proven 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/her argument than is offered against his/her argument.

## **HOW TO PROVE YOUR CASE?**

1. **WITNESSES**--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 and give testimony upon a certain matter.
2. **SUBPOENA**--If Subpoena is required, the Plaintiff or Defendant must provide a written list of the witness' name, address and telephone number to the Court Clerk. The Subpoena must then be taken to the Sheriff's Dept. or private process server for service. There will be additional cost 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 COURT ON THE DATE OF YOUR TRIAL. Anything not brought with you to trial will not be considered by the Judge.**

If your case concerns a contract, bring the contract with you. If your case concerns damage 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 or present a written statement for what the witness said. The witness must be present to speak for himself.

## **HOW SHOULD YOU 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 evidence and the witnesses when he is ready. Do not present them until the Judge asks for them. Do not interrupt the Judge and avoid saying or doing anything to anger or irritate the Judge or other party.

Show up prepared to present your side. The purpose of the Small Claims Court is to offer an inexpensive and speedy method of hearing your case.

## **CAN YOU APPEAL THE JUDGE'S DECISION?**

Yes. The appeal must be filed within thirty (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. An Appeal Transcript must be obtained from the District Clerk and filed with the Garland County Circuit Clerk. The Appeal Transcript fee is \$10.00 and is paid to the District Clerk at the time a Transcript is requested. The fee for filing the appeal in Circuit Court is \$165.00 and must be paid to the Circuit Clerk at the time of filing the appeal. 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 to prevent the prevailing party from enforcing the judgment.

## **ONCE YOU GET A JUDGMENT, WHAT DO YOU DO?**

The Court only decides who should prevail in a given lawsuit. 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 money that the Judge has found you are entitled to, there are three (3) possible actions available to you: a Writ of Garnishment, a Writ of Execution and a Lien on Real Property. You may want to contact an attorney to help you through this. **NOTE: YOU CAN NOT TAKE ANY ACTION TO COLLECT ON THE JUDGMENT UNTIL AT LEAST 10 DAYS FROM THE DATE OF THE JUDGMENT.**

A **Writ of Garnishment** is an order to someone who is holding money for the Defendant, such as a bank or employer. If the Writ of Garnishment is issued to an employer to obtain some of the Defendant's wages, the maximum you may get is 25% of Defendant's wages. Sometimes a person's low wages will prevent you from being able to garnish his wages or may allow you to receive only a small amount of money at a time.

The Writ of Garnishment is filed with the District Court Clerk. The District Court Clerk has the Writ of Garnishment forms. You will need the Defendant's place of employment and address or the name of the Bank if you are garnishing his bank account. The fee for issuing a Writ of Garnishment is \$10.00 plus approximately \$5.54 for certified mail, which must be paid at the time of filing the Writ with the District Court Clerk. 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 are collected from the Defendant.

After the Writ of Garnishment served upon the employer or bank of the Defendant they have twenty (20) days in which to file an answer. Failure by the employer or bank to answer may result in the Judge entering a judgment against the employer or the bank for the full amount specified in the original judgment plus cost.

**The money withheld by the employer or bank will be mailed directly to the Plaintiff. The District Court Clerk will not be responsible for collecting the money from the employer or bank.**

A **Writ of Execution** is an order telling the Sheriff to take property owned by the Defendant and sell it at a public auction in order for you to get your money. The District Court Clerk has the Writ of Execution forms. The fee for filing a Writ of Execution is \$10.00 and must be paid before the Writ will be prepared. You will also need to obtain a copy of the Defendant's Personal Property Assessment from the County Tax Assessor and provide to the District Clerk at the time the fee is paid. 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. The Sheriff's office fee is \$120.00 and must be paid directly to them. Not only are there additional fees for the writ and service, you may be required to post a bond in case the item seized does not belong to the Defendant. The bond will protect you and the Sheriff's 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, it will be towed and stored while he publicizes the sale of the item.

You may be required to pay for storage fees, advertising costs, and, if a car is involved, for towing charges, but you will be reimbursed for these costs from the proceeds of the sale.

A **Lien on Real Property** is a lien against any real estate that the Defendant owns. You will need to have the District Clerk certify a copy of your judgment. There is a \$5.00 charge for certifying the judgment. You will then take the certified copy of the judgment to the Circuit Clerk's office of the county where the real property is located. You will have to pay the recording fee charged by the Circuit Clerk. You may proceed to enforce this lien like any other lien. The most common way that you receive payment under this method is when the Defendant sells or refinances the property. You will probably want to contact an attorney to help you through this.

### **CAN YOU CALL THE COURT FOR ADVICE?**

The District Court Clerk's Office cannot give legal advice. The clerk can only answer procedural questions. If you have legal questions, please contact an attorney.

The most important thing for you to remember is that the Court is 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, contact the District Court Clerk at (501) 321-6765. We will be happy to assist you in procedural matters concerning Small Claims Court.

**FOR ADDITIONAL INFORMATION, PLEASE CONTACT THE ARKANSAS BAR ASSOCIATION/LAWYER REFERRAL SERVICE AT (501) 375-4606.**

## **THE CLERK IS NOT PERMITTED BY LAW TO GIVE LEGAL ADVICE.**

**NOTE: This information contained herein is done as a public service, it is not intended as legal advice, nor is the information exhaustive. It is your responsibility to familiarize yourself with the Arkansas Rules of Civil Procedure and Arkansas District Court Rules regarding Small Claims.**