

**HOW TO USE THE FAYETTEVILLE
SMALL CLAIMS COURT**

A division of Fayetteville District Court
Fayetteville, Arkansas

Effective March 25, 2009, the Fayetteville District Court boundary changed. We can only take complaints where the plaintiff or defendant has a Fayetteville address. If you feel you have an exception, you may petition the court for permission to file here.

WHAT IS THE SMALL CLAIMS COURT?

The Small Claims Court is an informal court which people can use to sue for money without an attorney.

WHO CAN USE THE SMALL CLAIMS COURT?

Any person, corporation with three or less stockholders, partnership or other organization can file or be filed against in Small Claims Court. To find out if a corporation has three or more stockholders contact the corporation and ask them. For the agent for service of a corporation, contact the Arkansas Secretary of State's Office, Corporation Division.

Attorneys are not allowed in Small Claims Court.

HOW MUCH CAN I SUE FOR?

Up to \$5,000.00 for claims involving contracts, agreements, or damages to your personal property.

HOW LONG MAY I WAIT BEFORE FILING MY CLAIM?

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 claim. If your claim pertains to an oral agreement or contract, rent, or injury to goods, then you have three years to file your claim.

WHAT IS THE FILING FEE IN SMALL CLAIMS COURT?

Service by certified mail on claims
from \$1.00 up to \$5,000.00.....\$75.04
(\$65.00-filing fee + \$10.04-certified mail fee)

For service by Sheriff's Office on claims from \$1.00 up to \$5,000.00, please bring cash, a check, or a money order made out to the Court for the \$65.00 filing fee for each case, and a money order, business check, or cashier's check made out to the Sheriff's Office for \$50.00 service fee for each person living at different addresses. The charge for two or more people who reside at the same address is only \$50.00. (The Sheriff's Office will not take your personal check or cash.)

To use a process server, contact the Court Clerk's office.

SMALL CLAIMS COURT HELPS:

- Tenants whose landlords refuse to return their deposits.
- Landlords whose tenants damage the premises, or fail to pay their rent.

- Those that pay for a service and don't get it.
- Those who can't afford a lawyer.
- Students stuck with their roommate's phone bill.
- Businesses whose customers refuse to pay on their accounts.
- Car owners who are not satisfied with a repair shop's work.
- Anyone who feels another owes him money.

****You may not file personal injury or eviction claims in Small Claims Court.**

DO I NEED A LAWYER?

No. Lawyers are not allowed in Small Claims Court. If either side should retain a lawyer, the case is automatically transferred to the District Court's Civil Division. You may consult with an attorney if you are not sure of your case, but he may not represent you in the actual Small Claims Court.

HOW DO I START A SMALL CLAIMS ACTION?

If you are filing a Small Claims action you are called the plaintiff. If you have been sued you are called the defendant. To start an action, you must fill out a Complaint Form which you get from the Court Clerk. This form explains whom you are suing, for how much money, and why you are claiming the money. You must bring the completed form to the Court Clerk's office or fill it out while at the Clerk's office. The form must include the defendant's complete address, the amount you are seeking, and a brief statement of why the amount is owed. If you want to sue a company or corporation with 3 or less stockholders, you must supply the name of the agent for service. This may be obtained from the Secretary of State's Office. The defendant will be sent a copy of your complaint by certified mail (unless you request a summons to be served by the Sheriff's Office or a process server). **It is your responsibility to provide the Court with a good address with which to obtain service. If you do not have a home address at which to serve the defendant and you only have their employment address, you must use the Sheriff's Office or a process server to serve the summons.** Your case will be scheduled for trial by the Clerk at the time you file your complaint with the Court.

WHAT IF THE DEFENDANT DOES NOT FILE A WRITTEN ANSWER WITHIN 20 DAYS?

Your case is eligible for a default judgment. A default hearing will be held on the scheduled trial date. At the hearing, the Judge will enter the judgment as long as you have the necessary proof to support your claim. If for any reason service is not made upon the defendant by certified mail, contact the clerk for alternate service. The defendant must be served within 120 days or your case may be dismissed.

WHAT IF I DON'T KNOW ANYTHING ABOUT THE LAW?

It doesn't matter. At trial, simply explain your side of the dispute to the Judge.

WHAT SHOULD I DO TO GET READY FOR TRIAL?

If you are the plaintiff, you should collect any papers, documents, or pictures which relate to the case, and bring them with you when you go to trial. Bring receipts, bills and estimates to show the Judge to help you prove your claim. If possible, you should bring a witness to testify to the facts which might prove your claim. The Court Clerk will issue a subpoena to require the attendance of anyone you want to call as a witness. Ask the clerk for the fees for this.

If you are the defendant, you should follow the above procedure for the plaintiff. If you do not wish to contest the plaintiff's claim, you may settle with the plaintiff before your trial date and have the plaintiff dismiss the action so that no judgment may be awarded by default to the plaintiff. You may answer the claim by denying that you owe the money, and you may file an Answer and Affirmative Relief Form if you feel that the plaintiff may owe you money. Your Answer and Affirmative Relief Form must be filed with the Court prior to 48 hours of the time set for your trial.

WHAT DO I DO AT TRIAL?

When your case is called, you should try to explain as simply and completely as possible why the person you are suing owes you money. The Judge will probably help you by asking questions, so you should try to answer these questions clearly, completely, and truthfully.

ONCE I WIN, HOW DO I GET THE DEFENDANT TO PAY ME?

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. You may collect only from the person you win judgment against. If the defendant has not paid you the amount of your judgment plus costs within 10 days, you can request that the Court issue:

1. **A writ of garnishment** (\$10.00 court fee) which authorizes the defendant's employer to withhold a portion of his/her wages to satisfy the judgment. The maximum the employer can hold out is 25% of his/her net pay. Sometimes a person's insufficient income will prevent you from being able to garnish his/her wages or will allow you to receive only a small amount of money at a time. If this happens, you may want to try to garnish the defendant's bank account.

You will need to supply the Court with the defendant's place of employment and address or the name of the bank if you are garnishing his/her bank account.

If you issue a writ of garnishment to an employer, it is valid for the life of the judgment or until the defendant no longer works at that place of employment. A writ of garnishment issued to a bank is good only for one withholding. Your judgment may be paid after issuing only one garnishment depending on the amount. You will have to pay the service fees each time a garnishment is issued. Those fees are added to what the defendant owes you.

2. **A writ of execution** (\$10.00 court fee) which authorizes the Sheriff's Office to seize and sell the property of the defendant to satisfy the judgment. The writ of execution is more complicated than the garnishment and sometimes takes longer. If you would like more information, contact the Court Clerk.

The fees for having the Washington County Sheriff's Office to serve these papers are:

Writ of execution-----\$120.00

Writ of garnishment-----\$ 80.00

These fees are automatically added to the amount of your judgment and you may recover them along with your filing fees.

A process server may also be requested to serve garnishments and subpoenas. There are additional fees for issuing and service of these papers. Contact the Clerk's Office for information on these fees. **You may also serve garnishments through certified mail. The fee for this is \$20.04.**

WHAT IF THE PLAINTIFF OR THE DEFENDANT IS NOT SATISFIED WITH THE COURT'S DECISION?

Either party has the right to appeal the decision to the Washington County Circuit Court within 30 days where the entire case will be heard by the Circuit Judge. The fee for preparing your file is \$5.00. If you want to keep the plaintiff from collecting the judgment while appealing, you must post a supersedeas bond with the Clerk of the Court in the amount of the judgment plus the costs.

If this bond is not posted within 10 days from the date of the judgment, the plaintiff can take action to collect the judgment. There is a filing fee to file your appeal in the Circuit Clerk's Office. You may call them to find out the cost.

SHOULD I USE THE FAYETTEVILLE SMALL CLAIMS COURT? (VENUE)

The venue of civil action instituted in the Small Claims Court should be as follows:

1. When a defendant has contracted to perform an obligation in a particular city for rent of real property or delivery of goods, an action may be commenced and maintained either in the city where such obligation is to be performed, or in the county in which the defendant resides at the commencement of the action.
2. When the action is for injury to your personal property, either the county where the damage occurred or where the defendant resides at the commencement of the action shall be proper venue.
3. In all other cases, actions should be commenced in the county in which the defendant resides.

(5)

WHO SHOULD I CONTACT IF I HAVE ANY QUESTIONS ABOUT SMALL CLAIMS COURT PROCEDURES?

You may contact the Fayetteville District Court Clerk's office at 479/587-3594 on any weekday between 7:30 AM and 4:30 PM, or you may write to:

Fayetteville District Court
176 S. Church Street, Suite 1
Fayetteville, AR 72701

****The court clerks cannot answer legal questions. If you have a legal question, please contact your attorney.**

YOU MAY ALSO ACCESS THIS INFORMATION ONLINE AT www.accessfayetteville.org.

MARCIA BRINTON, SMALL CLAIMS REFEREE

Small Claims Clerks: Gay Reynolds, Millie Olson, and Irene Zuniga (bilingual).

Revised: December 17, 2009