

How Do I Handle A Small Claims Case?



What is a Small Claims Court?

Small Claims Courts handle civil disputes involving less than \$5,000.00. Attorneys are not involved. If either party hires a lawyer, the case will be transferred to the Sherwood Court's Civil docket and the other party will be allowed the opportunity to hire an attorney.

How do you start a Small Claims Court case?

You file a document called a Complaint in the Small Claims Court in the county where you live or where the other party lives. The complaint tells the judge the reason for your lawsuit and the amount of money you are suing for. The court office will advise you of the procedures to follow to get the other party served with papers.

The Defendant has thirty days from the date they are served with the lawsuit to file a document called an Answer.

Who are the parties in the lawsuit?

The person filing the lawsuit is called the Plaintiff. The person being sued is called the Defendant.

What if I am sued?

If you are the Defendant in a lawsuit, file an answer to the complaint within thirty days. Read the notice provided to you with the complaint to know your rights. If you fail to appear in court or file an answer, a default judgment could be entered against you. If you have a lawsuit or claim against the Plaintiff, you must file it in

writing with the court at least thirty days before your trial or your claim could be barred. Your lawsuit is called a counter-claim. A copy of your counterclaim must be mailed to the Plaintiff.



"My client pleads not guilty by reason that the other kid started it."

What happens in court?

Both sides must attend any court hearings. If the Defendant fails to appear, the Plaintiff wins a default judgment. If the Plaintiff fails to appear, the court will dismiss the lawsuit against the Defendant.

Each side should bring any proof that supports their side of the case. That proof is called evidence and can be photographs, documents, receipts, etc. Witnesses that have personal knowledge of the facts or who are experts should also appear.

How do I present my case?

Each side is given time to present their case to the judge. Since the Plaintiff filed the lawsuit, they go first. The Defendant will present their side of the case when the Plaintiff is finished or "rests."

Use brief notes to explain your side and submit to the judge any evidence you want the judge to consider. Do not address the other party unless the judge advises you to do so.

After both sides have presented their evidence, the judge will rule. If there is a lot of evidence presented at trial, the judge may rule later and declare that he/she is “taking the case under advisement.”

Once the judge rules, either party has thirty (30) days to appeal that decision. An appeal will be to the circuit court in Little Rock, where a different judge will hear the case.

If the Plaintiff wins, he/she is awarded a judgment based on the amount that they sued for. If the Defendant wins, the Plaintiff’s case is dismissed.

What if I win judgment, how do I collect it?



There are several ways to collect your judgment. The good news is that during the collection process, your judgment is earning interest.

(1) LIEN ON REAL PROPERTY

Your judgment can be a lien against any real estate that the defendant owns. But you must record a certified copy of your judgment in the circuit clerk's office of the county where the land is located. The clerk will charge a recording fee. Having the lien against the debtor's property means you get your money in full if

they debtor sells any real estate. By law, your judgment must be paid before the debtor can close on the sale.

(2) WRIT OF GARNISHMENT

Another means of collecting on the judgment is a *writ of garnishment*. This is an attachment on the debtor's bank, wages or any other obligation owed to the judgment debtor. With this writ, an employer, bank, or anyone else owing the judgment debtor money, is ordered to subtract a certain amount of the defendant's paycheck until the judgment is paid. The maximum amount per paycheck is twenty-five percent (25%). The United States Department of Labor, Wage and Hour division has regulations on garnishments. If the Debtor's wages are less than the minimum requirements, the wages could be exempt. If the defendant is employed, a garnishment order can be attached to the defendant's bank account.

You file your writ of garnishment with the district court clerk of the court where you won your judgment. Please call the clerk to see what you need to bring. Generally, you will need at least the defendant's place of employment and address. If you are garnishing his or her bank account, you will need to know the name of his or her bank, and the address (a social security number and account number might also be helpful). You will also need to bring a \$10.00 fee plus the certified mail fee for the clerk to process the garnishment. These costs will be added to the amount the defendant owes in the judgment.

Some district court clerks will prepare the writ of garnishment for you, or let you copy a form from another case to use as an example. You must send one notice annually to the debtor informing him /her of their rights and responsibilities.

After the writ of garnishment is filed, the bank or the debtor's employer has

twenty (20) days to file an answer. Failure by the bank or the employer to answer could result in the judge entering a judgment against the bank or the employer for the amount that the bank or employer owes the debtor.

After filing the writ, the clerk should let you know when the money should be expected to arrive at the court. You will need to go to the clerk's office on that date and sign a statement showing you received the money.

(3.) WRIT OF EXECUTION

Another form of collecting on a judgment is a *writ of execution*. This writ directs the sheriff to take property of the defendant (i.e., t.v., furniture, stereo, cars, etc.) and sell them at a public auction. The money from the sale goes to you to satisfy your judgment. This can be a very exacting process and is an area of potential liability on your part. Remember you will be responsible for all the costs involved.

To get a writ of execution against a defendant, you need to take the following steps:

- (a) Go to the district court clerk where you won and tell them you want to file a writ of execution.

- (b) Fill out the personal information form from the clerk, (Link for Form) take it to the sheriff's office and pay them the fee required for delivery. Stay in touch with the sheriff's office to keep informed what the status is of the writ. The sheriff's office will not call you. A bond must be posted with the court in case the item you are executing against is not owned by the judgment debtor. The bond will protect you and the sheriff's process office against being sued if the item belongs to someone else.

If you have the writ filed without serious problems, the sheriff will take possession of the property. If a vehicle is involved, the sheriff will have it towed and stored while he publicizes the sale of the item. You will be responsible for storage fees, advertising costs, and, if a vehicle is involved, for towing charges. You will be reimbursed for these costs from the proceeds of the sale. It will be helpful to the sheriff if you have a vehicle description, license plate number, make and model of the vehicle the judgment debtor owns.

(4) POST JUDGMENT DISCOVERY

Under Arkansas Law, any party suffering a judgment has forty-five (45) days, after entry of the judgment, to file with the clerk of the court a schedule, verified by affidavit, of their property, both real and personal, including monies, bank accounts, rights, credits, and choses in action held by them or others for them. Failure to comply with this provision allows you to file a Motion to Show Cause for non-compliance. The Motion to Show Cause must be verified if contempt is alleged. (Verifying is simply signing under oath that the allegations made in the motion are true and correct to the best of your ability and belief.) The defendant is required to appear and to answer questions about assets. Contempt can be addressed by the immediate payment of the outstanding judgment or, in the extreme example, jail of the party failing to comply with the court order. Call the clerk's office after forty-five (45) days of your receipt of the judgment to see if the debtor complied with the order regarding their assets.

CONCLUSION

The above ways to collect are available in any district court in Arkansas. These courts are here to serve you. If you have any questions or are confused about the steps involved in collecting a small claim, call an attorney. The district clerk in your area cannot give you legal advice but can provide you with sample forms and assistance in mailing your process.

For additional information, please contact the Arkansas Bar Association/ Lawyer Referral Service at (501) 375-4606.