

IN DISTRICT COURT OF CRAIGHEAD COUNTY, LAKE CITY SMALL CLAIMS DIVISION

PLAINTIFF(S)

ADDRESS _____

CITY, STATE, ZIP _____

PHONE # _____

CASE NO. _____

DR. LICENSE # _____

EMAIL ADDRESS: _____



DEFENDANTS(S)

ADDRESS _____

CITY, STATE, ZIP _____

PHONE # _____

DR. LICENSE # _____

EMAIL ADDRESS: _____

COMPLAINT

NATURE OF CLAIM: _____

AMOUNT OF RELIEF CLAIMED: _____

DATE CLAIM AROSE: _____

FACTUAL BASIS OF CLAIM: _____

SIGNATURE OF PLAINTIFF

SUMMONS TO DEFENDANT / NOTICE TO DEFENDANT AND PLAINTIFF

THIS MATTER WILL BE HEARD ON _____ DAY OF _____, 20____ AT 9:30 A.M. YOU ARE HEAREBY WARNED TO FILE A WRITTEN ANSWER WITH THE CLERK OF THIS COURT WITHIN THIRTY (30) DAYS AFTER YOU RECEIVE THIS CLAIM (RESIDENT OR NON-RESIDENT) AND FORWARD A COPY TO THE PLAINTIFF AT THE ADDRESS ABOVE. IF YOU DO NOT FILE AN ANSWER WITHIN THIRTY (30) DAYS (RESIDENT OR NONRESIDENT) OF RECEIVING THIS CLAIM. A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU. IN THE EVENT A DEFAULT JUDGMENT IS ISSUED, THE DEFAULTING PARTY WILL HAVE 45 DAYS FROM THE COURT HEARING WHERE THE JUDGMENT WAS ISSUED TO COMPLETE AND RETURN A COPY OF THE AFFIDAVIT OF FINANCIAL MEANS TO THE CLERK OF THE COURT, THE AFFIDAVIT MUST BE NOTARIZED BY THE CLERK AND A COPY MAILED TO THE OPPOSING PARTY WHO OBTAINED THE JUDGMENT.

CRAIGHEAD COUNTY DISTRICT COURT
SMALL CLAIMS INFORMATION SHEET

Check the status of your case by going to *caseinfo.arcourts.gov*. Search by using the case number assigned by the Court.

The Deputy Clerk is not a lawyer and therefore cannot provide legal advice.

You are the plaintiff. The other party is the defendant.

Fill in the complaint completely and sign where the complaint states Signature of Plaintiff.

You must have a physical address so that the Complaint can be served properly to the defendant.

If the Defendant is a company, you must call 1-501-682-3409 or 1-888-233-0325 (Arkansas Secretary of State) and ask for the Agent of Service for the business you are inquiring about.

The filing fee is \$65.00. The payment for the filing fee is paid to the District Court and is separate from the service fee. Usually, if judgment is awarded in your favor, the filing fee will be recorded in the judgment and is subject to collection.

You are responsible in filing your pleadings with the Court. You will need to provide two (2) copies of your complaint per defendant, one (1) copy for the plaintiff, along with a copy of your pleadings, and the original paperwork will go to the court.

There are two acceptable ways to have your complaint properly served:

Sheriff's Office \$50.00

Process Server \$35.00 & up

The service fee amount will be determined by the number of defendants that are being served. This fee is paid separately from that of the filing fee. The defendant must be served within 120 days of filing.

The Defendant must file an answer with the court within thirty (30) days of the date of service, regardless of their residence.

On your court day, it is the plaintiff's responsibility to bring all documentation, receipts, pictures, persons, etc. that is pertinent to your case. The clerk may provide you with subpoena forms should you need them, but you will be required to have them served by Sheriff or process server.

If the judgment is awarded to the plaintiff, it can be collected from the defendant at the time of court, or after 10 days of the judgment the plaintiff may process a Writ of Garnishment on the defendant's wages or bank account. There is a filing fee of \$10.00 that will be applied to the defendant's writ for collection.

The defendant has 30 days to Appeal the judgment to a higher court.

If the judgment is awarded in the favor of the plaintiff, you are required to file a Satisfaction of Judgment once the defendant has paid their debit in full and send a copy to the defendant.

Note: District Court is not involved in the exchange or arrangement of payment.

Venue (where to file your claim):

Contracts:	the county where contract was entered into or was to be performed.
Damage to personal property.	the county where damage occurred or where the Defendant resides.
Debt:	the county where the defendant resided at the time the cause of action arose or where the debt was agreed upon.
All other cases:	the county where the defendant resides.

The Statute of Limitations: Web site — www.arkbar.com (Look under publications).

Written contract:	5 years from the date the contract is broken.
Oral contract:	3 years from the date the contract is broken.
Recovery of personal property:	3 years from the date the property was taken or damaged.

The People's Court:
Small Claims Court in Arkansas

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 change. Individuals needing assistance in selecting a lawyer may want to visit arkansasfindalawyer.com. This is an on-line attorney directory of the Arkansas Bar Association and contains attorneys listed in 50 different areas of practice.

In Small Claims Court, you can sue to recover damages to personal property, money owed, or for delivery of personal property which is worth \$5000.00 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 complaint. The complaint should be kept simple so the defendant can understand, without the aid of an attorney, why he is being sued. A small claims complaint 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 complaint 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 recovery for damages to personal property, for money owed, or for delivery of personal property which is worth \$5000.00 or less. If you sue for money damages, the maximum amount you may claim is \$5000.00.

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 (5) 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 (3) 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 Civil 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 injury to persons or to personal property, you can file a lawsuit in the county in which the injury 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 complaint. 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 the form that is attached, complete it and file it with the clerk in order to start a small claims lawsuit.

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 (3) 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 Civil 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 civil court if any party is represented by an attorney. The case may be transferred to Circuit Court if the defendant counter sues for more than \$5000.00.

Costs of presenting a claim with small claims division of the District Court varies from county to county. The minimum filing fees are \$25.00. 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 has the right to pursue the matter in court.

The prevailing party (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 thirty (30) days of service, regardless of where the defendant resides. He/she must mail a copy of his/her answer and/or counterclaim to the plaintiff. After an answer and/or counterclaim have been filed, the parties will be required to appear before the court on the court date that has been given by the court, on the summons.

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 form provided to him/her by the District clerk. He/she 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, however if he/she wins in court he/she may 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 for court or answer the plaintiff's complaint, the judge may enter a default judgment to the plaintiff and determine the amount of damages.

2. If the plaintiff does not show...

If the plaintiff fails to show for court the judge may dismiss the lawsuit. If the defendant has filed a counterclaim, the judge may award a default judgment to the defendant and determine the amount of damages.

3. If the party who failed to show for court 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, with proof of reason, to the judge, before or on the court date, explaining why he/she could not appear for court. If the judge determines that there is a 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 appear for court, he/she must provide a letter, with proof of reason, to the judge, before or on the court date, explaining why he/she could not appear before the court and ask 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/her 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/she must prove his/her 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/her argument.

L. 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 to give testimony upon a certain matter.

2. Subpoenas:

If subpoenas are requested, the plaintiff or defendant must provide a list of the witness's names, addresses, and telephone numbers to the court clerk. There will be additional costs for issuing and 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 ask 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 dressed appropriately and prepared to present your case. 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 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 money that 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%. Sometimes a person's low 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 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/her bank if you are garnishing his/her 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 twenty (20) days in which to file an 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.

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 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 sheriffs 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 these costs from the proceeds of the sale.

CONCLUSION

The preceding has been a brief analysis of the small claims division established in many District Courts throughout the state. The most important thing is 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 court.

(Updated in 1997 by Larry D. Vaught, Pulaski County Municipal Judge. Prepared in 1984 by Bill Hancock, law clerk, Pulaski County Municipal Court. Updated in 1987 by State Representative David Mathews. Updated in 1991 by Lynn Williams, Chair, Young Lawyers' Section, Arkansas Bar Association and Edwin Alderson, Municipal Judge Retired, El Dorado and Dennis Sutterfield, Municipal Judge, Russellville. Updated in 1994 by Robert L. Lowery, Municipal Judge).

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