

THE DISTRICT COURT OF BENTON COUNTY, ARKANSAS
SILOAM SPRINGS DIVISION

Each district court in Arkansas has a division known as small claims court. 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 with the ultimate purpose 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.

WHAT CAN YOU SUE FOR?

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

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 have three years to file your claim.

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, civil division.

IS ANYONE BARRED FROM SUING IN 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.

MAY ONE OF THE PARTIES SEEK A TRANSFER OF THE CLAIM TO DISTRICT COURT, CIVIL DIVISION?

Transfer of a small claim case prior to trial should be permitted only by the order of a judge. The case will be transferred to district court, civil division if any party is represented by an attorney. The case may be transferred to circuit court if the defendant counter sues for more than \$5,000.

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.

WHAT DO YOU FILE?

In order for you 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 defendant;
2. The amount of money being claimed or a description of property to be recovered;
3. The date the claim arose;
4. A brief description of why the plaintiff believes the defendant owes him the amount of money or property claimed;
5. Notification to the defendant stating that he must answer the lawsuit upon receipt of the complaint.

The Arkansas legislature has devised a form for use by you in filing a complaint. Your small claims clerk has copies of this form to make available to you.

The uniform filing fee to be charged by the clerks of the district courts for initiating a cause of action in the small claims division of district court is \$65.00, effective 8/1/2009.

A copy of the complaint form is usually served to the defendant in one of three ways:

1. Certified mail, \$10.30 postage fee;
2. Personal delivery by the Benton County Sheriff, \$50.00 fee;
3. Personal delivery by a private process server, \$40.00 and up fee;

A summons is a Writ of Process directed to the sheriff or other proper officer requiring him to notify the person named that an action has been commenced against him and that he is required to answer the complaint in the action or have judgment entered against him.

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 defendant must file this form within 30 days if he is served in Arkansas or within 30 days if he is served out-of-state. He must mail the original copy to: The District Court of Benton County, Arkansas, Siloam Springs Division, PO Box 80, Siloam Springs, AR 72761. A copy must be mailed to the plaintiff. After an answer has been filed, the parties will be notified of a trial date by the 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 costs of enforcing any judgment. The losing party will be ordered to pay these costs in addition to the amount of the judgment. However, the judge has the power to award or deny the costs of action.

IS THE DEFENDANT ALLOWED TO FILE A COUNTERCLAIM?

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.

The defendant must file a counterclaim on a written form provided him by the court. He must then see that the plaintiff and clerk receive a copy of the counterclaim. The defendant must bear the cost of the filing and service of the counterclaim, if any.

CAN YOU APPEAL THE JUDGE'S DECISION?

Yes. The appeal must be filed within 30 days from the date the small claims judgment is filed in the clerk's office. An appeal does cost more money. You will have to pay the following fees:

1. District Court of Benton County, Arkansas, Siloam Springs Division, \$15.00 filing fee.
2. Benton County Circuit Court, \$165.00 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.

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

1. If the defendant does not show up or answer the plaintiff's complaint, the judge will enter a default judgment. A default judgment gives the plaintiff the damages he asked for in the complaint.
2. 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 will 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, he should submit a letter to the judge explaining why he was absent. If the plaintiff failed to appear and a good reason was 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, and there is a good reason shown for the absence, the judge may set the default judgment aside and set a new court date.

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 a greater amount of evidence in favor of his argument than is offered against his argument.

HOW DO YOU PROVE YOUR CASE?

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. A subpoena is a command to appear at a certain time and place to give testimony upon a certain matter.

If subpoenas are requested, the plaintiff or defendant must provide a list of the witnesses names, addresses and telephone numbers to the clerk. There will be additional costs for issuing and serving each subpoena. The Benton County Sheriff's fee is \$50.00 and the private process server's fee is \$30.00 for each subpoena served. An additional cost plus mileage may be required by a subpoenaed witness. This cost is to be paid by the plaintiff or defendant.

Besides witnesses, you should find other evidence which will be helpful to you. You must bring all the evidence with you to 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. If your case concerns a contract, bring the contract 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.

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 witnesses when he/she is ready. Do not present them until the judge asks for them.

Do not interrupt the judge. Avoid saying or doing anything that might 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 court is to present an inexpensive and speedy method of hearing your claim. Showing up prepared helps the judge make a decision.

WHAT EFFECT DOES A JUDGMENT IN MY FAVOR HAVE?

The Court only decides who should prevail in a given suit. 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.

HOW DO YOU FILE A 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 insufficient 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 try garnishing the defendant's bank account.

The writ of garnishment is filed with the small claims division of the district court. There are certain things that you will need to bring when you come to the clerk's office:

1. The defendant's place of employment and address and the name and address of his bank if you are garnishing his bank account;
2. The defendant's social security number if you have one;
3. A copy of your judgment;
4. The filing fee of \$10.00 plus \$5.75 postage 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 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 cost.

After filing the writ of garnishment, it is your responsibility to keep in touch with the clerk's office.

HOW DO YOU FILE A WRIT OF EXECUTION?

The writ of execution is more complicated than the writ of garnishment.

It is an order telling the sheriff to take the property of the defendant (car, truck, boat 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:

1. Go to the district court, small claims division, where you filed your suit and indicate your wish to file a writ of execution.
2. The filing fee is \$10.00 for the District Court of Benton County, Arkansas, Siloam Springs Division. The Benton County Sheriff's fee is \$150.00. These costs will be added to the amount that the defendant owes in the judgment. However, you are responsible for paying these costs when you file the writ of execution.
3. The small claims clerk will prepare the form and mail it to the sheriff's office along with the sheriff's fee.
4. The sheriff has approximately sixty (60) days from the issuance date of the writ of execution to collect monies. If the sheriff's office is unable to effect service they will return the papers and keep a fee of \$20.00.
5. It is the responsibility of the plaintiff to stay in touch with the Court until the writ of execution is served or returned to the Court.

CONCLUSION

The preceding has been a brief analysis of the small claims division of the District Court of Benton County, Arkansas, Siloam Springs Division.. The most important thing for you to remember is that the Court is here to serve you. If you have any questions or are confused about any of the elements or steps involved in filing a small claim, call the small claims division (Tuesdays, Wednesdays, and Thursdays only) at 238-0957 or go by the clerk's office at 410 North Broadway, Siloam Springs, AR 72761.

All fees quoted in this booklet are subject to change.

- Credits:
1. "The People's Court: Small Claims Court in Arkansas
Arkansas Bar Association, December, 1997
 2. "Arkansas Code of 1987 Annotated", Volume 14, Title 16, Chapters 1-54