

**YOU AND
SMALL
CLAIMS
COURT**

Table of Contents

Section I - The Small Claims Court	3
Section II - Jurisdiction	6
Section III - Before the Hearing	7
Section IV - Settlement	9
Section V - The Hearing	14
Section VI - The Decision	15
Section VII - After the Hearing	19
Section VIII - Helpful Hints	20
Section IX - Small Claims Court Diary	24

Section I

THE SMALL CLAIMS COURT

Introduction

Sometimes your legal problem cannot be handled economically by your attorney. When the amount of money involved is too small to justify paying an attorney to handle it for you, but you don't want to be forced to abandon your claim you can prosecute your case yourself. In these cases you have a judicial forum you can use to resolve the controversy. Small claims courts exist in every state to decide cases involving a small amount of money. The judge runs the proceedings in an informal manner. You present your case, the defendant presents a defense and the judge decides who should prevail. This pamphlet answers the most commonly asked questions by non-lawyers thinking of filing a suit in small claims court. It is not a difficult process and you do not have to do it completely alone. Your attorney can help you prepare for your day in small claims court and answer any other questions you might have.

Definitions

Definitions of some terms used in small claims court:

amendment - a change made to the petition after it has been filed

appeal - request by the losing party to have another court review the case

appearance date - day the case will be heard

attachment - process of seizing the property of the defendant to pay the judgment obtained by the plaintiff

bailiff - person who keeps order in the small claims courtroom

case number - the number assigned to your case by the clerk of the small claims court

clerk of the court - person who handles the paperwork of the court

collection - the process of getting the losing party to pay the amount of money ordered by the court

continuance - additional time granted by the judge to the defendant or plaintiff after the appearance date has been set

petition or affidavit - statement by the plaintiff setting out the facts that entitle him or her to recover money from the defendant

counterclaim - statement by the defendant that sets out facts that tend to prove that the plaintiff owes the defendant money and establishes additional issues for the small claims court to decide

default judgment - a judgment for the plaintiff in a case where the defendant did not appear to contest the lawsuit

defendant - the person who is being sued by the plaintiff

dismissal - if the plaintiff is not ready to present evidence at the hearing the claim will be disallowed

docket - the list of cases to be heard on a specific day

evidence - the documents (documentary evidence) and oral testimony (testimonial evidence) that tends to prove the plaintiff's case or the defendant's defense

execution - enforcement of the terms of the judgment

fee and costs - the amount of money the plaintiff and defendant must pay to the court to have the case heard

filing - process of initiating the case by depositing with the court clerk the complaint and summons and any required fees

judgment - the final order of the judge settling the case in favor of the plaintiff or the defendant

jurisdiction - power of the small claims court to hear and decide the case are limited to recovery of money that does not exceed the amount set by statute, and where the defendant has been served with notice of the case

hearing - another name for the small claims court trial

judge - person who will hear the evidence and decide the case in the small claims court

motion - a request for the court to perform some act

motion to stay execution of judgment - request that the defendant be given some amount of time in which to pay the judgment to the plaintiff

motion to vacate judgment - request by the losing defendant to have the judgment set aside and not enforced

plaintiff - the person who initiates the case in small claims court

prosecution of the case - the plaintiff must file the case, appear at the hearing and present evidence to prove the case
- failure to prosecute the case will result in the case being dismissed

service of process - letter or document mailed or hand-delivered to the defendant that informs the defendant that a small claims court case has been instituted against him or her

stipulation - agreement by the plaintiff and the defendant

subpoena - order by the court for a witness to appear

summons - letter from the small claims court that tells the defendant when and where to appear to try the case

venue - the small claims court can only hear and decide those cases that arise in the court's geographic area

SECTION II

Q. What is “Small Claims?”

A. Under the Civil Procedure Code of Oklahoma an action for recovery of money based on breach of contract or injuries (but not libel and slander), and actions to recover personal property and interpleader, may be brought on the Small Claims docket where the amount to be recovered does not exceed \$4,500.00.

Q. Why Small Claims?

A. The Small Claims procedure was introduced to allow citizens to bring claims before a Judge quickly. The Legislature has provided that there be no pleadings in small claims except those needed to state the claim or counterclaim. Small Claims are required by law to be heard not more than 30 days after the claim is filed. Court Clerks in almost all counties have the requisite forms available.

Q. Is this quicker than the Civil docket?

A. Yes. It sometimes takes upwards of a year for a civil case to come to trial.

Q. Who may use Small Claims?

A. Anyone who has a claim against another in Oklahoma, provided the claim is \$4,500.00 or less, may use the Small Claims procedure. The person must pay the filing fee prescribed by law. Any company which may otherwise bring a lawsuit in Oklahoma may use the Small Claims procedure. However, no action may be brought under Small Claims procedure by any collection agency agent or any assignee claim.



Section III JURISDICTION

Question: What is meant by jurisdiction of the court?

Answer: Jurisdiction is the term used for the court’s authority to hear a case and decide which party should prevail. There are three jurisdictional issues that must be met for the small claims court to have jurisdiction over your case. You must satisfy the jurisdictional requirements of geography, amount claimed and notice to the defendant.

Question: What is geographical jurisdiction?

Answer: The court system is divided into geographical areas that determine which court has jurisdiction over your case. The clerk of the court can tell you what court would be appropriate based on your residence, the residence of the defendant and the place the actions leading to the lawsuit happened.

Question: What is the jurisdictional amount?

Answer: Small claims courts can only hear cases involving a certain amount of money that is established by the law. At the present time, in Oklahoma, that amount is \$4,500.00. The small

claims court cannot grant any judgment in an amount greater than the jurisdictional amount. You can still use the small claims court even if the defendant owes you more money than the jurisdictional amount, if you agree to limit your claim to the amount the court can award. You will not be able to recover the excess amount even if you use the small claims court.

Question: What is the jurisdiction of the person?

Answer: The defendant must have been notified of the lawsuit before the court has jurisdiction over him or her. The defendant must live in the area covered by the small claims court or have done something in the court's jurisdictional area for the court to have authority to force the defendant to abide by its decision.

Question: What kind of case can I try in small claims court?

Answer: The small claims court is designed to resolve a simple conflict between two people in a quick and inexpensive manner. Small claims courts usually are limited to deciding cases that can be resolved with the payment of money by one party to the other. The clerk of the court or your attorney can tell you whether your case is one that the small claims court can decide. Certain types of cases might also be suitable for what is called alternative dispute resolution.

Question: Can I sue a corporation in small claims court?

Answer: Yes, you can sue a corporation in small claims court. You will need to find out the name and address of the corporation's registered agent for the service of process. The state Secretary of State can tell you who is the corporation's agent, or in some cases accept the complaint on behalf of the corporation.

Question: Does anything change if I am suing a corporation?

Answer: No, the corporation is entitled to be represented by an attorney in small claims court, just as an individual is. The informal rules of evidence are still applied.

Section IV BEFORE THE HEARING

Question: How do I know where to file my case?

Answer: Before a court can hear and decide your case, it must have jurisdiction and venue. You may have a choice of courts depending on the facts of your case and the type of case it is. Each court has geographic boundaries that determine its venue. You will be able to file your case with the court that covers the area where the actions giving rise to your case occurred. For example, where a traffic accident occurred or where a lease or contract was performed. You may also choose to file your case in the court that has geographic venue over the area where the defendant resides. The clerk of the court can help you decide which court (or courts) have jurisdiction to hear your case.

Question: What happens if I file my case in the wrong court?

Answer: Your case will be dismissed and you will have to file it in the correct court to have it heard.

Question: How do I file my case?

Answer: The clerk of the small claims court will give you a form for filing your case. This form is the affidavit. You will have to fill in the blanks on the form and pay the filing fee to the clerk to start the prosecution of your case.

Question: How do I keep track of my case if I have to talk to the clerk about it?

Answer: When you file your case the clerk of the court will assign it a number. Use the number each time you contact the court whether by telephone or mail.

Question: What questions does the affidavit form ask?

Answer: The small claims affidavit form identifies the court, the plaintiff and the defendant and sets out the plaintiff's claim against the defendant in a simple statement.

Question: What happens next?

Answer: The affidavit must be served on the defendant so he or she will know the suit has been filed. The affidavit informs the defendant what the plaintiff wants and why the plaintiff thinks the defendant owes it. The clerk of the court will explain which procedures are available to you (for example: personal service, service by mail or service by publication).

Question: What is personal service?

Answer: Personal service on the defendant is one way to inform the defendant of the lawsuit. Personal service means that the defendant was handed, in person, a copy of the complaint. There are requirements for who can serve the affidavit on the defendant. You as the plaintiff and members of your family should not serve the defendant personally. This restriction is intended to reduce the opportunities for conflict between the plaintiff and the defendant. Deputy sheriffs and professional process servers can be employed to serve the complaint on the defendant. In some states the filing fee includes the fee for having the complaint served by a deputy sheriff or employees of the court.

Question: What is service by mail?

Answer: The affidavit can in some cases be sent to the defendant by certified or registered mail, with a return receipt to show that the defendant received the complaint. This method of service is common in small claims courts.

Question: How will I know the defendant has received the letter?

Answer: You will need to send the notification by certified mail, return receipt requested, restricted delivery. Restricted delivery means that only the defendant can sign for the letter and is conclusive proof that the notice has been received by the defendant.

Question: Will the receipt be sent back to me?

Answer: Yes it will.

Question: Do I have to mail the notice to the defendant or will the court do it?

Answer: The court will not mail the notice to the defendant, but the court may do it for your for a fee by sending a sheriff's deputy to serve it.

Question: What happens if the defendant does not accept the certified letter?

Answer: If the defendant does not sign for the letter there has been no service of process on the defendant and the court has failed to gain jurisdiction over him or her.

Question: What do I do then?

Answer: You will have to arrange to serve the defendant personally. You may have to employ a professional process server at this point to make sure that the defendant is properly served.

Question: Won't a professional process server cost me money?

Answer: Yes, you will have to pay for the professional process server. In many states this expense is recoverable from the defendant as part of the cost of the case that can be awarded to you if you win.

Question: What is service by publication?

Answer: Service by publication means that the defendant is notified of the lawsuit by a legal notice published in the newspaper. This method of service is very rare in small claims courts.

Question: What happens after I have filed the affidavit and served the defendant?

Answer: The defendant will have an opportunity to file an answer to your affidavit. The answer is a simple statement of why the defendant feels he or she does not owe you the money you claim. The defendant may also file a counter-claim at this time.

Question: How long does the defendant have to file an answer?

Answer: The defendant does not have to file an answer.

Question: What is a counter-claim?

Answer: The defendant's counter-claim is a statement that the plaintiff in fact owes the defendant money arising out of the same set of facts that the plaintiff alleges created a claim against the defendant. If the plaintiff had not instituted a small claims court action against the defendant first, the defendant could have filed the counter-claim as a lawsuit against the plaintiff.

Question: How long does the defendant have to file a counter-claim?

Answer: Not less than 72 hours prior to the court hearing.

Question: What is the effect of the defendant filing a counter-claim?

Answer: If the counter-claim alleges that the plaintiff owes the defendant more money than the jurisdictional amount of the small claims court, the case will be transferred out of the small claims court. Otherwise the counter-claim just raises additional issues between the defendant and the plaintiff for the judge to decide, and against which you will have to be ready to defend yourself.

Question: Can the defendant just make up a counter-claim to get the case out of the small claims court?

Answer: If the court determines that the amount claimed in the counter-claim was designed only to

get the case transferred out of the small claims court it may ignore the counter-claim and still hear and decide the case.

Question: What happens to my case if it is transferred?

Answer: The rules of evidence and procedure of the court to which the case is transferred will govern the case. You will no longer be able to use the simplified and informal procedure of the small claims court. The defendant will be entitled to have an attorney represent him, and you may have to employ an attorney to represent your interests.

Question: Can I drop my case if it is transferred to another court?

Answer: Yes, you can withdraw your complaint, but the court will still have jurisdiction based on the counter-claim to which you will have to respond.

Question: After the defendant has filed an answer, what happens?

Answer: The clerk of the court will set the case for hearing. The clerk will notify you and the defendant of the time and place the case will be heard.

Question: What do I do if I need translator services?

Answer: If you have special needs, let the clerk of the court know about them. Usually some arrangements can be made so your case can be heard and decided in a manner fair to both you and the defendant. Translator services are available in many states.

Question: What should I do if the facts change after I have filed the affidavit and before the trial?

Answer: You can amend your affidavit, usually at the same time of the hearing, to reflect the changed circumstances, such as the defendant having paid you some money. If you want to add new claims against the defendant you must file the amendment and serve the defendant at least 10 days before the hearing.

Question: What do I have to do to get ready for the trial?

Answer: You must decide how to prove your case. First you must gather your evidence and then determine how best to present it to convince the judge that the defendant owes you the money you claim.

Question: What kind of evidence can I use?

Answer: You can present documentary evidence, such as signed contracts or receipts, showing why

you think the defendant owes you money. You can also bring people with you who have personal knowledge of the dispute between you and the defendant who can testify as to what happened.

Question: Can I use a lawyer to help me?

Answer: You can consult an attorney to help you prepare your case and coach you on how to present it, but in most small claims courts, a lawyer will not be able to speak for you. If you want to use a lawyer, you should not use the small claims court.

Question: What if I don't have any friends who saw what the defendant did? If I told someone about what the defendant did, can that person testify for me?

Answer: No. Only people who have personal knowledge of what caused the dispute between you and defendant are qualified to testify.

Question: I've got my evidence ready. What now?

Answer: You need to practice your presentation of your case. Practice in front of a mirror, practice in front of your family, practice in front of strangers on the street. Practice until you are completely comfortable with the facts of the case and the evidence you intend to present. Most people do not have experience in a courtroom presenting a case to a judge, so being nervous is to be expected. Practice will reduce your nervousness when you are in front of the judge in small claims court.

Question: Is there anything else I can do to get prepared?

Answer: It is a good idea to watch and see a morning or afternoon docket with the judge who is scheduled to hear your case. You can see how the judge runs the hearing and what is successful for the plaintiffs and defendants. The more familiarity you gain about the courtroom, the judge and what is expected of the parties, the better you will feel when your day in small claims court arrives.

Question: What else do I do to get ready?

Answer: You need to treat your lawsuit much like an athletic event. You know the day and time you need to be ready, so you can prepare yourself. You have prepared your evidence and practiced the presentation of your case until you are comfortable. You have observed a few small claims hearings. You know where the courthouse is, where to park and how much time you need to get there on time. You can relax because you are ready to win your case. Get a good night's sleep and get to the courthouse on time.

Section V SETTLEMENT

Question: What should I do if the defendant offers to settle the case?

Answer: You should listen to the defendant's offer and evaluate it carefully. You should estimate your chances of prevailing at the hearing and how much time, money and aggravation will be involved in collecting the potential judgment. If the settlement offer is fair you should seriously consider accepting it.

Question: Can I contact the defendant and suggest a settlement?

Answer: Yes. There is no prohibition on you contacting the defendant and suggesting a settlement.

Question: What do I do if I agree to a settlement?

Answer: You must notify the small claims court that you and the defendant have reached a settlement and that you want to withdraw the complaint.

Question: Should I notify the clerk of the court as soon as the defendant and I agree to a settlement?

Answer: No. Wait until you have received the money you have agreed to accept as a settlement before you withdraw your complaint. After you have cashed the defendant's check is soon enough to withdraw the complaint.

Question: Is there a time limit for agreeing to a settlement?

Answer: No. You can agree to settle the case at any time before the judge decides the case.

Question: Can the defendant and I settle the case after there has been a judgement?

Answer: You can agree to accept less than the judgement amount from the defendant. This may be worthwhile if collecting the full amount would be difficult or costly.

Section VI THE HEARING

Question: What will happen at the hearing?

Answer: When your case is called, you will be expected to take the positions in the front of the courtroom designated for the plaintiff and the defendant. In some small claims courts everyone in the courtroom will be sworn to tell the truth at the beginning of the docket. In other courts the parties and their witnesses are sworn in when the case is called for hearing.

Question: Do I have any say over who hears my case?

Answer: No. You are entitled to have your case heard by a properly appointed judge.

Question: What if the defendant does not show up?

Answer: If the defendant does not show up to defend the complaint against him or her, you may be entitled to receive a default judgment. If the defendant fails to appear, you will be told what you have to do to obtain the default judgment.

Question: Is there something special I have to do to get a default judgment?

Answer: Depending on the procedures of the court, you may have to file a form requesting that the court grant the default judgment. The judge may just enter the judgment when the defendant fails to appear.

Question: So if the defendant doesn't show up, I win automatically?

Answer: No. You must still be prepared to present your case even if the defendant is not there. You have to show that you are ready to proceed before the court will enter a judgment.

Question: Will the court excuse the defendant's absence and not grant a default judgment?

Answer: Probably not. If the defendant has a good excuse for failing to appear at the hearing, the judge may excuse the absence and reschedule the hearing.

Question: What if I can't get to the small claims court the day the trial is scheduled?

Answer: You need to make every effort to appear on the day and time your case is scheduled to be heard. However, if it is impossible for you to get to court you can call the clerk and explain why you

will not be there. You should contact the clerk as soon as you know you will be unable to appear. You may request a continuance from the court that, if granted, will change your appearance date to another day. The sooner you request the continuance the more likely it is that it will be granted.

Question: What happens if I don't know until the day of the trial that I can't make it?

Answer: You will need an extremely good excuse to justify not appearing on the day of the trial if you have not previously requested a continuance. But if you have an unexpected emergency, call the clerk and explain.

Question: If I miss the trial and haven't contacted the court clerk what should I do?

Answer: You should still contact the clerk even if you miss the hearing. Your reason for failing to appear may be excusable. At the least you will want to know what your options are after failing to appear.

Question: What usually happens if the plaintiff does not appear for the trial?

Answer: The plaintiff must prosecute the complaint by appearing before the small claims judge at the time scheduled for the case. If you fail to show up the judge can dismiss the complaint and bar you from suing the defendant again.

Question: What happens if neither the defendant nor the plaintiff shows up?

Answer: The result when neither party appears depends usually on which party contacts the court first with the best excuse for failing to appear. Generally, the court will dismiss the case.

Question: The defendant is there and I'm ready. What can I expect?

Answer: The judge will read your complaint and the defendant's answer and then ask you, as the plaintiff, to present your case. Here is where your practice pays off. If you present your version of the events in a concise and clear manner that shows you have prepared seriously, the judge will be able to follow your presentation and your reasoning that the defendant owes you the money you claim.

Question: Do I present evidence at this time?

Answer: You should present your case just like you practiced. Your evidence should be presented at this time. Remember that you are your own best witness to prove what happened between you and the defendant. Speak clearly and directly to the judge.

Question: What do I do with the documents that prove my case?

Answer: You must make copies of the documents you intend to use to prove your case. You will give one copy to the judge and one copy to the defendant of each document you use.

Question: Do I just hand the judge the copies?

Answer: Yes. Staple the copies together in the order you intend to use them.

Question: What do I do if I need a witness to prove the case?

Answer: There are different procedures for witness testimony in the different small claims courts. The judge may want to ask the witness questions, or you may be allowed to ask the questions. It is a good idea to tell the judge why you need the witness to testify. The judge can then make sure that the witness' testimony is useful and needed.

Question: What if the witness I need does not agree to come to the hearing?

Answer: In most state you can subpoena the witness and force him or her to appear to give testimony. The clerk can help you with the subpoena process if you need to use it.

Question: What if I get mixed up and forget something?

Answer: Do not worry. If the judge does not understand something or feels you have left out important information he or she will ask you questions about the missing portions of your case. Be prepared for questions from the judge in any event. The judge needs to be sure of the facts that will support the judgment he or she will make between you and the defendant. Some facts have legal significance that may not be apparent to you. Just answer the questions as asked.

Question: Will the defendant get to ask me questions or challenge what I am saying?

Answer: Yes. The defendant can ask you questions but not interrupt your presentation. The judge will tell the defendant to let you speak if you are interrupted.

Question: What should I do if the defendant interrupts me or says I am not telling the truth?

Answer: You should ignore the defendant no matter what the defendant does. Your audience, and the only person you should be interested in at the hearing, is the judge. Let the judge run the hearing.

Question: What if the defendant talks at the same time I am trying to talk?

Answer: The judge allots time to each party to the lawsuit. If the defendant interrupts and talks when it is your time, the judge will tell the defendant to be quiet. Do not attempt to argue with the

defendant. Wait until the defendant is quiet and then proceed with your presentation or answer that the defendant interrupted.

Question: Won't the defendant be taking my time if I don't respond to the interruptions?

Answer: Every person in the small claims proceeding has a defined role to play. The judge will run the hearing; it is up to the judge to insure that the hearing is fair. Your job is to present your case and be prepared to answer questions. Keeping track of the time is the judge's job, not yours.

Question: If the defendant says something that is not true what should I do?

Answer: Ignore the defendant throughout the hearing. Just as the defendant should not have interrupted you during your time to speak, you should let the defendant have the time allotted for the defense. You will get an opportunity to speak in response to the defendant's presentation. That is the time to address the untrue statements made by the defendant.

Question: Will there be a jury for my trial?

Answer: No.

Question: Do I have to ask the defendant questions?

Answer: No.

Question: What happens if there are no witnesses or documents to prove my case?

Answer: If you have no evidence to prove your case, you as the plaintiff will lose. The plaintiff has the obligation to prove that what is claimed in the complaint actually happened. In a 'swearing contest', where you and the defendant say opposite things, the defendant will win in most cases. There are some instances where you can still prevail without witnesses or documents. Talk with your attorney to see if your case is one that can be won with only your personal testimony.

Section VII THE DECISION

Question: When will the case be decided?

Answer: The judge can decide the case right after hearing the evidence and listening to the responses to his questions. In some cases, the judge will delay making a decision until later, in which case the decision will be mailed to you and the defendant.

Question: Why would the decision be delayed?

Answer: The case might have presented a legal question the judge felt needed more research before the correct decision between you and the defendant can be reached. In other cases the judge might feel that the potential for violence between the parties to the lawsuit is too great to make the decision known while they are together.

Question: What do I do after the judge decides the case?

Answer: Whether the judge decides for or against you, thank the judge. You will be given a copy of the judgment. In some cases the judgement will be mailed to you. You may have to sign an acknowledgment that you have received a copy of the judgment. At this point your case is over, except for collecting the judgment if you have prevailed.

Section VIII AFTER THE HEARING

Question: If I lose the case can I appeal?

Answer: Yes, but only if you have requested a transcript to be made of the hearing. This has to be requested in advance.

Question: What happens if the case is appealed?

Answer: What happens depends on the nature of the appeal allowed. The small claims court records its proceedings and a transcript of the case is sent to the next court level for review of the judge's decision. The clerk of the court will tell you what appeal rights you have from the small claims court.

Question: If I win do I get my money at the end of the case?

Answer: No. The small claims court grants the judgment but it is your responsibility to collect the money the judge said the defendant owes you.

Question: Does the defendant have to pay me right then?

Answer: Usually the judgment is suspended for a period of ten days to allow the defendant to gather the money and pay it to you. This is known as the stay of execution of the judgment. The defendant can request a longer period before payment is due if special circumstances exist; for example, a longer stay may be appropriate for a defendant who is paid only once a month.

Question: Can I use a lawyer to collect my judgment?

Answer: Yes. Your lawyer can often collect the money from the defendant much easier than you can. The fee charged is usually a percentage of the amount collected. If the defendant refuses to pay it may be worthwhile for you to discuss collecting your judgment with your lawyer.

Question: If I decide to try to collect on the judgment how do I begin?

Answer: Collecting the money from the defendant may be the most difficult part of proceeding through the small claims court. The judgment allows you to attach the property of the defendant and have the property sold so you can collect your money.

Question: How do I attach the defendant's property?

Answer: You have to find out what property the defendant owns before you can proceed against it to satisfy your judgment. If the defendant owns a house you can file your judgment as a lien against the house.

Question: How do I file my judgment as a lien?

Answer: For real estate (houses and land) you take your judgment to the county clerk for the county where the land is located and, after paying the filing fee, your judgment is recorded as a lien against the defendant's property.

Question: Then do I get paid?

Answer: You would not be paid until the defendant tries to sell the property. Then you would be paid out of the proceeds.

Question: How long would I have to wait?

Answer: You have to wait until the defendant tries to sell the house, however long that might take.

Question: Do I get interest on the judgment?

Answer: Your judgment will begin to earn interest at the legal rate from the date the judgment becomes enforceable until paid by the defendant.

Question: Can I force the defendant to sell his house so I get my money?

Answer: As a practical matter the answer is no, you may not force the sale of the defendant's house. You would have to guarantee that all encumbrances on the property recorded before your judgment are paid before you get your money. Forced sales of property rarely bring in enough money to satisfy the mortgage on the property so it makes no sense to force the sale of the property.

Question: Can I force the defendant to sell his car or something else?

Answer: As a practical matter the answer is no. You may force the defendant to sell a car to satisfy your judgment, but if there is a loan on the car it has to be paid before you get any money. The problem is that there is usually not enough left over after paying the loan to pay you.

Question: What can I do to collect my judgment?

Answer: You can force the defendant's employer to pay you a portion of the defendant's paycheck each pay period. This process is known as garnishment. Your lawyer can help you and explain the

garnishment procedure in your state.

Question: Can I recover all the expenses I incur in collecting the judgment?

Answer: Only some expenses are recoverable by the plaintiff. Fees for lawyers or professional collection agencies are not recoverable, but the costs of having a sheriff seize assets of the defendant are recoverable from the sale price of the assets.

Question: Can the defendant pay the judgment in installments?

Answer: The defendant can request that the court allow payment of the judgment in installments in some circumstances. If the court allows installment payments you will be paid based on the schedule the court approves.

HELPFUL HINTS

Question: What are the most important things for me to remember?

Answer: You must remember the judge has many cases to hear each day. Be on time, ready to present your case when called. Be respectful of the position of the judge; he or she represents the legal branch of the government and is due your respect. Address the judge or hearing officer as “Your Honor.” Dress appropriately for your day in court in clean clothes. No tee shirts and torn pants.

Remain calm and under control. Speak clearly and loudly enough to be heard by the judge. Look the judge in the eyes when you speak. Refrain from speaking when the judge is questioning the defendant or witnesses. Your case is very important to you, but remember that the judge has heard many cases just like yours and is not emotionally involved in the outcome. Present your case, answer any questions asked of you and accept the judgment of the judge. Thank the judge for his or her time at the conclusion of the case, whether you win or lose.

Remember above all else that the small claims court process is designed to resolve your legal conflict quickly. After the judge has decided the case, it is over unless an appeal happens. Present your case and accept the outcome gracefully. You have had your day in court that is your right under our legal system and have by your participation strengthened that system. Be proud of yourself for standing up for your constitutionally protected rights in a court designed specifically for you.

Section IX -
SMALL CLAIMS COURT DIARY

PLAINTIFF INFORMATION

Name _____
Address _____
Telephone Number _____

DEFENDANT INFORMATION

Name _____
Address _____
Telephone Number _____
Agent if Corporation _____

COURT INFORMATION

Court Name _____
Court Address _____
Court Telephone Number _____

CASE INFORMATION

Case Number _____
Date Filed _____
_____ Date Defendant Can Request Transfer _____
_____ Date Answer Due _____
_____ Date Counter-Claim Can Be Filed _____
Fee Paid _____
Judge Assigned To Case _____
Appearance Date _____
Date of Judgment _____
Date Judgment Can Be Forced _____
Date Appeal Can Be Taken _____

SERVICE OF PROCESS

Form of Service

Personal Service

Name and Address of Person Serving _____

Date Defendant Served _____
Fee Paid _____

Certified Mail

Date Mailed _____
Certification Number _____
Fee Paid _____
Date Receipt Returned _____
To Whom Receipt Returned - You _____ Court _____

COMPLAINT INFORMATION

Amount Defendant Owes _____
Reason Defendant Owes Money _____

ANSWER INFORMATION

Date Answer Filed _____
Reason Defendant Does Not Owe Money _____

Date You Received Answer _____

COUNTER-CLAIM INFORMATION

Date Counter-Claim Filed _____
Basis of Counter-Claim _____

Date You Received Counter-Claim _____

MATERIAL TO PROVE COMPLAINT

Documents _____

Copies Made for Court _____

Copies Made for Defendant _____

WITNESSES

1) Name and Address _____

Relationship To You _____

Nature of Testimony _____

Agree to Testify _____

Notified of Court Date _____

Subpoena Necessary _____

Subpoena Obtained and Served _____

2) Name and Address _____

Relationship To You _____

Nature of Testimony _____

Agree to Testify _____

Notified of Court Date _____

Subpoena Necessary _____

Subpoena Obtained and Served _____

3) Name and Address _____

Relationship To You _____

Nature of Testimony _____

Agree to Testify _____

Notified of Court Date _____
Subpoena Necessary _____
Subpoena Obtained and Served _____

4) Name and Address _____

Relationship To You _____
Nature of Testimony _____

Agree to Testify _____
Notified of Court Date _____
Subpoena Necessary _____
Subpoena Obtained and Served _____

5) Name and Address _____

Relationship To You _____
Nature of Testimony _____

Agree to Testify _____
Notified of Court Date _____
Subpoena Necessary _____
Subpoena Obtained and Served _____

EXPENSE RECORD

Filing Fee _____
Fee for Service of Process _____
Witness Fee _____
Copies _____
Mileage _____
Fees to Record Judgment _____
Fees to Collect Judgment _____

