

WHEN FILING A COMPLAINT:

*SMALL CLAIMS IS FOR \$5,000.00 OR LESS, ANYTHING OVER THAT AMOUNT MUST BE FILED IN CIRCUIT COURT.

*THE COMPLAINT MUST BE FILED WHERE THE INCIDENT OCCURRED OR IN THE COUNTY WHERE THE DEFENDANT RESIDES.

*WE MUST HAVE THE PHYSICAL STREET ADDRESS WHERE THE DEFENDANT IS CURRENTLY LIVING/WORKING FOR PROPER SERVICE.

*WHEN FILING THE COMPLAINT, SUPPLY THE COURT WITH **2 COPIES** OF ANY EVIDENCE YOU WANT THE JUDGE TO REVIEW FOR YOUR CASE.

*THERE ARE **NO REFUNDS** FOR THE FILING FEE OR SERVICE FEE IF SERVICE IS NOT OBTAINED. *FILING FEE: \$65.00 CERTIFIED MAIL: \$10.00 PROCESS SERVER: \$50.00.

*ONCE SERVICE IS OBTAINED AND THE DEFENDANT HAS HAD TIME TO ANSWER, YOU WILL BE NOTIFIED OF A COURT DATE.

*PLEASE KEEP IN MIND, THE COURT ONLY DECIDES WHO SHOULD PREVAIL IN A GIVEN SUIT. COURTS ARE TRADITIONALLY ONLY RESPONSIBLE FOR THE DECIDING OF DISPUTES AND NOT THE ENFORCEMENT OF JUDGMENT. IT IS THE RESPONSIBILITY OF THE PLAINTIFF TO MAKE SURE THEY ARE PAID BY THE DEFENDANT

***BY LAW, COURT CLERKS ARE NOT PERMITTED TO GIVE ANYONE LEGAL ADVICE. PLEASE CONSULT AN ATTORNEY FOR ANY LEGAL QUESTIONS YOU MAY HAVE.**

IN THE DISTRICT COURT OF MAUMELLE, ARKANSAS
CIVIL/SMALL CLAIMS
The Honorable Roger B. Harrod, District Judge
100 Millwood Circle, Maumelle, Arkansas 72113
(501)851.7800 Fax (501)851.7427

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/she is being sued. A small claims complaint lists:

1. The names and complete 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.

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. The maximum amount you may sue for is \$5000.00. Claims over \$5000.00 must be filed in the Civil Division of the Circuit Court.

HOW LONG MAY YOU WAIT BEFORE FILING A COMPLAINT?

The length of time you have to file depends upon the claim you are bringing. If a written agreement has been broken or breached, you have (5) five years after the date it was broken to file your complaint. If an oral agreement or contract, unpaid rent or damage to personal property is involved, then you have (3) three years to file your claim.

WHERE DO I FILE?

The Complaint is filed in the county where the contract was to be performed, where the property was damaged, or where the defendant resides. If you are unsure of which county, file it in the county where the defendant resides.

HOW MUCH DOES IT COST?

The filing fee for a small claims case is \$65.00, which must be paid at the time of filing. The cost of serving notice to the defendant is extra, usually \$10.00 to \$50.00. If the plaintiff wins his case the defendant can be ordered to pay the filing fee and the service fee incurred by the plaintiff.

ARE ATTORNEYS INVOLVED IN SMALL CLAIMS?

No attorney of 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 an attorney becomes involved in a small claims case, the Judge will transfer the case to the Civil Division of the District Court.

WHO CAN NOT SUE IN SMALL CLAIMS?

Collection agencies or any person, firm, partnership, association, or corporation engaged/involved in the business of lending money with interest, may not sue in small claims court. 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 defined as closely held corporations may appear in small claims court if they are represented by officers of the corporation.

ONCE A CASE IS FILED, WHAT DO YOU DO?

Once the complaint is filed, the defendant must be served with a copy of the complaint within 129 days. There are four acceptable ways to have the complaint served.

1. The Sheriff of the county where the defendant lives may serve a copy of the complaint.
2. A private process server may be contacted to serve papers for the court.
3. Certified mail may be used. It must be sent return receipt, signed by the addressee only.
4. An agent who is 18 years of age or older appointed by the court in the county where service is to be given.

If the plaintiff wins the case he is entitled to have the defendant reimburse the cost of service.

WHAT HAPPENS ONCE THE DEFENDANT IS SERVED?

Once the Defendant is served, he has 20 days to file a written response with the Court. This response may be in the form of an Answer, a Counterclaim, or a Setoff. The clerk has these forms for the Defendant to complete. An Answer is the Defendant's response to the Plaintiff's Complaint. The Defendant may answer that he agrees with the Complaint, that he agrees partially with the Complaint, or that he totally denies the

Complaint. A Counterclaim is a claim for damages by the Defendant against the Plaintiff and arises from the same set of circumstances on which the Plaintiff filed his lawsuit. A Setoff is a special type of counterclaim which arises out of a different set of circumstances than those on which the Plaintiff filed his lawsuit.

If the Defendant files a Counterclaim or Setoff, he must file it with the Clerk and he must bear the cost of service of the Plaintiff with a copy of the papers. If the Defendant wins his case on the Counterclaim or Setoff, he is entitled to recover those costs from the Plaintiff.

WHAT HAPPENS IF A PARTY FAILS TO SHOW UP ON THE DATE THE COURT HAS SET TO HEAR THE CASE?

If the Defendant fails to appear or answer, the Judge may enter a Default Judgment for the Plaintiff based upon the damages presented to the court.

If the Plaintiff fails to appear, the Judge can dismiss the lawsuit. If the Defendant has filed a Counterclaim, the Judge may award a Default Judgment to the Defendant giving him the amount asked for in the Counterclaim.

If the Plaintiff was not aware prior to the time set for court that he could not attend, he should submit a letter to the judge explaining why he was absent. If the judge determines that there is good reason shown, then the judge may allow the Plaintiff to file again with additional filing and service fees.

If the defendant did not appear, he should write a letter to the Judge explaining why he was unable to attend 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.

WHO HAS THE BURDEN OF PROOF?

The burden of proof is on the Plaintiff for the Complaint and on the Defendant if there is a Counterclaim. A case is proven 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 argument.

HOW DO YOU PROVE YOUR CASE?

1. Witnesses

Find all witnesses who can testify for you and bring them to Court with you on the date set for trial. 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 witnesses' names, addresses and telephone numbers to the Court Clerk. There will be additional costs for 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 it to court. 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.

ONCE YOU GET A JUDGMENT, WHAT DO YOU DO?

The Court only decides who should prevail in a given lawsuit. Courts are only responsible for deciding suits and not for enforcing their decisions. It is the winner's responsibility to make sure the loser pays the amount the Judge orders. If you have trouble collecting the money 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.

WHAT IS A WRIT OF GARNISHMENT?

A Writ of Garnishment is an order to someone who is holding money for the Defendant such as an employer or bank. If the Writ of Garnishment is issued to an employer to obtain some of the Defendant's wages, the maximum you may receive is 25% of the Defendant's wages. Sometimes a Defendant's low wages may prevent you from being able to garnish wages or may allow you to receive only a small amount of money at a time.

The Writ of Garnishment is filed with the District Court in your area; the Court Clerk has the forms to be used. There are additional fees that must be paid at the time you file the garnishment. These costs will be added to the amount the Defendant owes you. You will need at least the Defendant's place of employment and address, or the name and address of the Defendant's bank.

After the Writ of Garnishment is filed, the employer or the bank has 20 days in which to file an Answer. Failure to do this can result in the Judge entering a Judgment against the employer or bank for the full amount specified in the original Judgment plus costs.

WHAT IS A WRIT OF EXECUTION?

A Writ of Execution is an order telling the Sheriff to take property owned by the Defendant and sell it at public auction for you to get your money. You should only use a Writ of Execution if there is no other means of collecting your money, because it is a very complicated process. The court clerk has the forms to file a Writ of Execution. Not only are there additional fees for the Writ and service; you are required to post a bond in case the item seized does not belong to the Defendant. The bond will protect you and the Sheriff's office against being sued if the item sold belongs to someone else. You are responsible for all costs incurred by the Sheriff's office including storage while the property is being held.

CAN YOU APPEAL THE JUDGES DECISION?

Yes. The notice of appeal must be filed within 30 days from the date the Judgment is entered on the Court's docket. All appeals are filed at the Circuit Court of the county where the District Court is located. A transcript must be obtained from the Court Clerk and filed with the Circuit Clerk. There is a \$5.00 fee for the transcript and an additional filing fee at the Circuit Court.

HOW SHOULD YOU CONDUCT YOURSELF IN COURT?

All questions and statements should be directed 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 interrupt the Judge and avoid saying or doing anything to anger or irritate the Judge or other party.

Show up prepared to present your side. The purpose of small claims court is to provide and inexpensive and speedy method of hearing your case.

CAN YOU CALL THE COURT FOR ADVICE?

The Court Clerk can not give legal advice. The clerk can only answer procedural questions. If you have legal questions, please consult an attorney.

Note: The information contained in this handbook 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 constantly change.