

Small Claims Court Process and Important Facts

I. Disclaimer

- a. This information is based on Kansas Law and is published to provide the public with general information. For your specific court facts and procedure contact your local Small Claims Court in your area.

II. Legal Terms You Should Know

- a. **Plaintiff**—A person who initiates a legal action; the party who complains or sues.
- b. **Defendant**—a person being sued.
- c. **Counterclaim**—a legal claim presented by a defendant in opposition to the claim of a plaintiff. Counterclaims avoid duplicate lawsuits over claims by each party against the other. Everything is handled in a single lawsuit using a claim and a counterclaim.
- d. **Garnishment**—a proceeding whereby property of money is applied to the debt owed by the defendant (judgment debtor) to the plaintiff (garnisher.)
- e. **Summons**—an order directing a sheriff or other officer to notify named people that a legal action has been commenced against them and that they are required to appear within a certain time to answer the complaint
- f. **Judgment**—the official decision of a court determining the rights of the parties involved.
- g. **Appeal**—a legal proceeding by which a party seeks a higher court review of the action taken by a lower court.
- h. **Subpoena**—a court order to a witness ordering him/her to appear and testify at a certain time and place.
- i. Service of process—the presentation of a summons to the defendant in a legal action or in a subpoena.
- j. **Judgment Creditor**—the party who wins a collection suit and to whom money is owed.
- k. **Judgment Debtor**—the party who loses a collection lawsuit and owes the money.

III. The Basics

- a. Small claims court is only for simple cases to recover money or property worth less than \$4,000. If you seek more than \$4,000 or require the judge to rule on matters of law, the claim is no longer “simple” and you should consult an attorney. If the amount you seek is more than \$4,000, to use small claims court, you must agree to a judgment of no more than \$4,000.

IV. No Lawyer, No Jury

- a. In most instances, you cannot be represented by a lawyer in small claims court. You can ask a lawyer for legal advice on the strengths and weaknesses of your claim. This is done out of court before the court hearing. The lawyer is not allowed to represent you during the trial, but should be allowed to be present at your trial if that is your wish. You cannot have a jury in small claims court.

Small Claims Court Process and Important Facts

V. Corporate Involvement

- a. The Small Claims Act allows individuals and businesses to use nonlawyer representatives in this court. Collection agencies may not use the court to collect for their clients.

VI. What Is Required To File A Case In Small Claims Court

a. Who can file?

- i. Those who file in small claims court must be at least 18 years of age, or be represented by someone 18 or older.

b. Limits on size of suits.

- i. Claims cannot be greater than \$4,000, exclusive of interest, costs, and any damages for worthless checks that may be awarded.

c. Limits on number of actions.

- i. No person can file more than 10 cases in small claims court in one calendar year.

d. Cost of filing.

- i. The court clerk's office in your county can tell you the amounts of the fee. A filing fee is required for a claim of \$500 or less. A claim in the amount of \$500.01 to \$4,000 requires a larger filing fee.

e. Information needed to file.

- i. To file a case, you must pay the filing fee and fill out a form (called a petition) showing your name and address, the name and address of the person being sued, the amount of money or property you are asking for, and why you are asking for it. You must provide information to locate the people being sued so they can be legally served an official summons (or notice to appear) in court. It is your responsibility to furnish the address to the clerk's office when you file the case.

f. Who can be sued in small claims court?

- i. You may sue any person or business operating in your state that you believe owes you money or property. That person must reside in the county where the case is filed. You may not sue the state, county, city or township entity, or any other government in small claims court.

VII. How Do I File A Claim

- a. You can file your claim by going to the small claim division of the clerk of your district court where you live or where the person being sued resides. You should have with you the required filing fee and the name and address of the person or people you are suing. You should also know the exact amount you want to recover and be prepared to give a written explanation of your case. You may then fill out the petition at the clerk's office and file it or you may take it home to complete and file later. The petition must be notarized or signed before the clerk.

Small Claims Court Process and Important Facts

VIII. After The Claim is Filed

- a. Once you have filed your claim, you will be notified of a hearing date. Then, a summons, along with a copy of your petition, will be served by the sheriff's department on the person being sued.
- b. If the defendant in your case cannot be located, you should contact the court for a continuance to give you more time to find a good address for the defendant. It is your responsibility to contact the clerk before each court date with a new address or whatever information you may have so that the person or people can be found. If you settle the case before the hearing date, notify the court at once so the case can be dismissed.

IX. Your Day In Court

- a. Small claims court proceedings are conducted informally by the judge. You should be prepared when you arrive for your hearing to clearly explain your side of the case. Be respectful and courteous to everyone involved in the case, even if other people are not courteous. Bring whatever evidence, papers, documents, or other materials you believe you need to prove or support your case. Either side may subpoena witnesses. However, subpoenas take time to service, so if you need subpoenas, do this several weeks before the trial date. A witness fee must be paid to subpoena a witness who is unwilling to appear. Both sides will be given time to explain their positions, or question and cross examine witnesses. The judge will make a decision after all the evidence is offered.

X. Counterclaims

- a. If the defendant filed a counterclaim against a plaintiff to offset what the plaintiff says is owed, the counterclaim may be heard at the same time. Depending on the circumstances, the judge may either make a decision immediately after hearing both sides or may continue the case on another date.

XI. Default Judgment

- a. If either party was properly served and does not show up for the hearing, the judge may declare the absent party in default and award judgment to the other party.