



**SMALL CLAIMS PROCEDURE**  
**GENERAL INFORMATION**  
**MARIE HIRST, DISTRICT COURT CLERK**  
**CANADIAN COUNTY, STATE OF OKLAHOMA**

**ADVICE REGARDING SMALL CLAIMS CASES:**

The court, its clerk, and personnel are neutral and can never become the legal advisor for you or the one being sued. Quite often, parties misunderstand the proceeding and look to the court for legal advice. By honoring such requests, a judge would breach judicial responsibility. Legal advice must come from your own attorney – not from the court. No judge can discuss the merits or details of any claim or defense with you except during the trial of the case.

**WHO CAN FILE A SMALL CLAIMS CASE?**

Anyone can file an action in small claims court for the recovery of a money judgment or to recover property. A small claims lawsuit is limited to claims based on contract or torts, such as negligent acts.

If you are a minor, a parent or guardian must bring suit for you.

You **MAY NOT** sue for damages resulting from libel or slander.

Collection agencies **MAY NOT** use the small claims court.

You need not hire an attorney to represent you in small claims court; however, if you choose to represent yourself, you must be prepared to comply with the statutes for the State of Oklahoma.

The help which the court and its clerks can give to you is very limited. You are responsible for having the information needed to fill out and complete the court forms. You are responsible for appearing in court with the evidence you need to support your claim. You are responsible for knowing how to collect any judgment which you may be awarded.

**ATTORNEY FEES:**

Your recovery of attorney's fees is limited to 10% of the amount you seek to recover in an uncontested case. Attorney fees are not awardable on all types of actions, and only if the attorney appears in court with you.

**WHAT TO DO BEFORE YOU START YOUR LAWSUIT:**

You must have the following information before you file your case.

- a.) Legal name of the person or company to be sued
- b.) If the party to be sued is a company, whether it is a corporation, and if so, the name that the office of the Secretary of State shows as a service agent. (You may call 405-521-4211 or go to <http://www.sos.ok.gov> there is a fee for the information. You may do a [record search](#) at this link. The Secretary of State's address is: 101, State Capitol Building, Oklahoma City, Oklahoma 73105)
- c.) The address where mail will be received by the one being sued or the place where the sheriff or process server can find him/her
- d.) The nature of the reason for your claim
- e.) The dollar amount for which you are asking
- f.) Make demand on the person or company for the amount he/she owes you or the property you want returned. **This is very important.** A cause of action hasn't arisen until demand is made.
- g.) You may bring witnesses to court to substantiate your claim, if you feel that is necessary. If your witness refuses to come voluntarily then you may obtain a subpoena form from the Court Clerk's Office and have the Court Clerk issue the subpoena. You may have anyone serve the subpoena. When the subpoena is issued you will have the original which will have a red stamp on it stating it is the original and needs to be returned to the Court Clerk's Office and also a copy which needs to be given to the witness to keep. You then return the original subpoena to the Court Clerk's Office with name, date and time the witness was served and by whom.



## **HOW TO FILE YOUR LAWSUIT:**

### **1.) FORMS:**

You may fill out the forms in the Court Clerk's Office that we have available or the forms can be found on our website [canadiancounty.org](http://canadiancounty.org). Be sure to read all of the instructions for the website forms. For an example of the Affidavit and Order, see page 7. The affidavit is your sworn statement that the defendant owes you money or is holding some of your property along with the order for him/her to appear in court. You complete the top half of the form and the Court Clerk's Office will complete the lower section with the court date. This way the defendant knows who is suing him/her, for what reason and when the court date will be held. Please make sure you bring 4 copies of each form.

### **2.) FEES:**

Court costs must be paid by you in advance before your suit can be filed: the limit you can sue for in small claims court is \$10,000.00. Costs are listed below:

- a.) When you are suing for a money judgment only between the dollar range of \$0.00 to \$5,000.00 the filing fee is **fifty eight dollars (\$58.00)** and you will need the defendant served with the copies of the paper work for the hearing which can be done by:
  - 1) County Sheriff which is a fee of **\$50.00**
  - 2) Private Process Server, whom you will pay directly as their fees vary; however, the process server must note the amount being charged on his/her return of service. If the Private Process Server does not note the amount charged for service, you may not be able to collect this fee with a garnishment.
  
- b.) When you are suing for a money judgment only between the dollar range of \$5,000.01 and \$10,000.00 the filing fee is **one hundred ninety six dollars and sixty four cents (\$191.64)** and you will need the defendant served with copies of the paperwork for the hearing which can be done by:
  - 1) County Sheriff which is a fee of **\$50.00**
  - 2) Private Process Server, whom you will pay directly as their fees vary; however, the process server must note the amount being charged on his/her return of service. If the Private Process Server does not note the amount charged for service, you may not be able to collect this fee with a garnishment.

The method in which you have the defendant(s) served is entirely your decision. If you win your case, these costs will be made a part of the judgment if all documentation of these costs is filed in the case.



### **SERVICE:**

Before your case can be considered on its merits by the court, the one being sued must be served with a copy of the papers by mail, the sheriff or private process server. If service is unsuccessful the first time, you may attempt it again for an additional service fee which would be an \*ALIAS\* order.

### **PLEASE NOTE:**

#### **NON-SERVICE OF SMALL CLAIMS - SUMMONS-F.E.D OR AFFIDAVIT/ORDER**

*- If service has not been obtained by your court date, you may appear before the Judge presiding over your case and request to file an Alias at that time.*

*- If service has not been obtained on the Defendant prior to your court date and you wish to file an Alias BEFORE your court date, you are STILL REQUIRED TO ATTEND YOUR ORIGINAL HEARING.*

***A DEFENDANT MAY APPEAR IN COURT ON THEIR SET HEARING DATE WITHOUT HAVING BEEN SERVED WITH A SUMMONS-F.E.D OR AFFIDAVIT/ORDER AND WAIVE THEIR RIGHT TO SERVICE OF THE SUMMONS-F.E.D. OR AFFIDAVIT/ORDER. THE JUDGE PRESIDING OVER YOUR CASE WILL CONDUCT THE HEARING WITH OR WITHOUT YOUR PRESENCE. AS THE PLAINTIFF IN YOUR CASE, YOUR FAILURE TO BE PRESENT ON YOUR HEARING DATE WILL RESULT IN A DISMISSAL OF YOUR CASE.***

### **TIME AND DATE OF TRIAL:**

After you file your suit, the court clerk will give you the date and time of the trial. The person you are suing must be served 7 days prior to your court date and so the date will be no sooner than ten days and no later than sixty days from the date you file. You must appear in court on the day and time assigned to you or your case will be dismissed. There will be no continuances of small claims hearings except with the specific approval of the judge.

### **WHAT TO DO IF THE DEFENDANT FILES A COUNTER-CLAIM OR SET OFF:**

You should know that the party you sue may file a counter affidavit, making a claim against you. The counter-claim is the defendant's reply to what you have claimed in your affidavit. He/she is saying that you owe him/her money and you must be prepared to supply evidence that you do not owe the money he/she claims.

The court costs for filing a counter-claim or set-off is **\$20.00**

Be sure you show up in court the day of the trial. If the defendant has filed a counter-claim or set-off and if he/she goes to court and you do not, you may end up with a judgment against you. If you show up and the defendant does not, you will probably win by default judgment. The defendant has to give both the clerk and you seventy-two hours notice of the counter-claim or set-off.

### **WHAT TO DO JUST BEFORE THE TRIAL:**

Call the Court Clerk's Office a few days before the hearing to make sure you have good service on the defendant. (405) 295-6170.

All small claims cases are set at the same time as yours. Small claims cases are always set for Mondays at 1:30pm unless there is a holiday and the small claims case will be set for the next business day after the holiday. Since there is no way to know exactly what time your case will be called it is a good idea to be at the courthouse a few minutes before **1:30 p.m.** so that you can locate the courtroom. There will be signs posted in the lobby on the second floor telling you in which court room the hearing will be held. All court rooms are on the second floor of the court house.

If the one you sue is assisted by an attorney, you will be given the opportunity to request time to hire your own attorney at your expense. But, because the judge may deny your request, you should be prepared to present your case.



### **TRIAL:**

The small claims docket will be called at **1:30 p.m.** When your name is called, please inform the judge that you are here and whether you are the plaintiff or the defendant.

- a) If the plaintiff is present and there is good service, and the defendant does not appear there will be judgment for the plaintiff after the judge hears the reasons for the lawsuit
- b) If the plaintiff is present and there is not service, the plaintiff must go to the Court Clerk's Office to file an \*ALIAS\* order if he/she wishes to continue with the lawsuit
- c) If the plaintiff is not present, but the defendant is present, the case will likely be dismissed with prejudice, this means the defendant has prevailed and plaintiff may not file another suit dealing with the same subject.
- d) If neither the plaintiff nor the defendant appears, the case could be stricken or dismissed. Depending on service.

Good service means that the affidavit has been delivered to the defendant according to the requirements of the statutes of the State of Oklahoma. Unless these requirements are met, the statutes of the State of Oklahoma do not permit the judge to give the plaintiff judgment even if the defendant knows the date and time of the hearing unless the defendant appears and waives their right to service.

### **COURT REPORTER:**

Court trial proceedings may be recorded by a court reporter. If proceedings are transcribed, they may be appealed to another court. If you wish to have your court proceedings recorded, you must give written notice of your request to the Court Clerk no less than 48 hours prior to your court date. You must also pay the clerk an additional fee of **\$50.00** for the services of the court reporter.

In court, you are required to prove that you have a right to a judgment. You should be prepared to testify under oath and support your claim with documents, witnesses and other evidence. The one being sued will be given an equal opportunity to present evidence and to ask questions to be answered by you and your witness. Court proceedings are conducted in the courtroom. Formality and procedures are relaxed and the judge may ask any questions he or she deems necessary to obtain information needed to correctly decide the case. You must conduct yourself with dignity and respect.

The judge will decide whether you have proven your case and whether the relevant evidence entitles you to a judgment. You must remember that the judge is neutral and will treat you and the one you are suing equal and impartial.

You should remember that the judge is an expert in the statutes of the State of Oklahoma and his or her decision will be based on law and evidence, his or her decision will be determined by the stronger evidence. If the judge is unable to tell whether the evidence on either side is stronger, then you will not have proven your claim. If you are not successful in proving that you are entitled to a judgment, the individual you sued may be entitled to a judgment, the individual you sued may be entitled to recover court costs and attorneys fees from you.



### COLLECTIONS:

A judgment by the court resolves who is right about your claim. A judgment by the court is not an order of payment or surrender of property. If you are given a judgment, you become a judgment creditor. The one you have sued becomes a judgment debtor. A judgment creditor has statutory rights to proceed against a judgment debtor to collect a judgment; however, most judgment creditors are not well informed about the collection procedures. You may need services of an attorney to collect a judgment.

It is not uncommon that a judgment creditor is unable to collect the judgment because no assets of the debtor can be located. You may want to evaluate your prospects of finding assets belonging to the defendant before spending the court costs to obtain a judgment.

If the judgment debtor fails to satisfy the judgment, the judgment creditor may:

- a) Require the debtor to appear and answer interrogatories regarding assets (these forms are available in the Court Clerk's Office). There is an additional filing fee of **\$66.64** plus service costs. Service by the county sheriff would be **\$50.00** plus the **\$66.64** filing fee for a total of **\$116.64** which you pay to the Court Clerk's Office; or for service by a private process server you pay the clerk's office the **\$66.64** filing fee and you pay the private process server personally for his/her service.
- b) Request the issuance of a writ of execution (to proceed with this you will need to seek the advice of an attorney). The filing fee is **\$116.64** with sheriff serving.
- c) Garnishment proceedings are also an extra charge.
- d)

There are basically three types of garnishments:

- a) Wage garnishments:
  - One time payroll garnishment
- b) Continuing wage garnishments:
  - In effect for six months from date of issuance (court costs on this type of garnishment is higher);
- c) Bank garnishment:
  - Garnish the defendant's bank account
  - \*\*For all these garnishments you will need to know the name and address of the employer or the bank\*\***

### STATEMENT OF JUDGMENT:

A judgment granted under the small claims procedure act shall become a lien on the real property of the judgment debtor within a county. When requested, the court clerk shall prepare a statement of judgment for the judgment creditor on the form of statement (see page 8). This must be filed in the office of the County Clerk. (201 N. Choctaw, across the street, South of the Judicial Building.) There is a fee for this filing and you will need to check with the County Clerk for that fee.

### REMOVAL TO DISTRICT COURT:

Although this does not happen often you should be aware that upon the payment of **\$50.00** court costs, the defendant may have the case removed from small claims court to district court which will deprive the small claims division judgment of jurisdiction over the matter. If this happens you will need to contact an attorney. Your recovery of attorney's fees is limited to 10% of the amount you seek to recover.



**APPEALS:**

Appeals may be taken from the judgment rendered until small claims procedure to the Supreme Court of the state in the same manner as appeals are taken in other civil actions. There are no pre-printed forms or instructions to be given you. You might want to seek the advice of an attorney as you must follow the Court Rules for the Supreme Court of the State of Oklahoma. There are also fees involved with this process.

**RELEASE AND SATISFACTION OF JUDGMENT:**

When the defendant pays you in full the amount of the judgment, court costs and attorney fees (if any) you will need to complete and file a Release and Satisfaction of Judgment. This form may be obtained from the Court Clerk's Office or found on the website [canadiancounty.org](http://canadiancounty.org) to be printed and completed.

**MONEY JUDGMENT:**  
**(MONEY, REPLEVEN OR INTERPLEADER)**

**FEEES FOR FILING SMALL CLAIMS-MONEY JUDGMENT:**

\$0.00 up to \$5,000.00..... \$58.00 plus service  
\$5000.01 to \$10,000.00..... \$196.64 plus service

**CHOICES ON HOW TO HAVE THE DEFENDANT SERVED:**

- 1) Sheriff's department..... \$50.00
- 2) Private process server..... you pay them directly

**FORCIBLE ENTRY AND DETAINER (EVICITION):**

**FEEES FOR FILING FORCIBLE ENTRY AND DETAINER**

\$0.00 up to \$5,000.00..... \$58.00  
\$5,000.01 to \$10,000.00..... \$131.64

**CHOICES ON HOW TO HAVE THE DEFENDANT SERVED:**

- 1) Sheriff's department..... \$50.00  
Plus \$11.00 (\$1.00 for a copy of the return and \$10.00 for mailing the copy to the plaintiff, this is a statutory fee)
- 2) Private process server..... you pay them directly

**SMALL CLAIMS JURY TRIAL COURT REPORTER FEES (FOR OVER \$1500.00 ONLY):**

Small Claims Jury Trial Fee..... \$50.00  
Small Claims Court Reporter Fee..... \$50.00

**(THIS MUST BE DONE IN WRITING NO LATER THAN 2 WORKING DAYS BEFORE HEARING DATE!)**



## GARNISHMENTS

### **\*\*ONE TIME GARNISHMENT\*\***

- 1) Non-continuing garnishment \*bank\*  
(Court Clerk does the mailing and the plaintiff wants a copy of the return)  
**\$87.64\*\*** each time the Court Clerk does the mailing
- 2) Non-continuing garnishment \*bank\*  
(Court Clerk does the mailing and the plaintiff does not want a copy of the return)  
**\$76.64\*\***each time Court Clerk does the mailing
- 3) Non-continuing garnishment\*bank\*  
(The plaintiff does the mailing)  
**\$66.64\*\***each time you file

### **\*\*CONTINUING GARNISHMENTS\*\***

(IN EFFECT 180 DAYS FROM ISSUANCE OF SUMMONS)

- 1) Court Clerk does the mailing and the plaintiff wants a copy of the return **\$127.64\*\*** each time the Court Clerk does the mailing
- 2) Court Clerk does the mailing and the plaintiff does not want a copy of the return **\$116.64\*\*** each time the Court Clerk does the mailing
- 3) The plaintiff does the mailing **\$106.64\*\*** each time you file

### **\*\*HEARING ON ASSETS\*\***

Hearing on Assets.....	\$66.64
**Sheriff to serve Order for Hearing on Assets.....	\$50.00

## OTHER MISCELLANEOUS FILING FEES

WRIT OF ASSISTANCE (F.E.D. EVICTION).....	\$116.64
WRIT OF EXECUTION (F.E.D. EVICTION).....	\$116.64

COUNTER-CLAIM..... \$20.00

\*Counter-claims in excess of \$5,000.00, ask the small claims clerk for information of additional fees that will be required\*. The small claims clerk may be reached at (405) 295-6170.