



FORT SILL LEGAL ASSISTANCE



SMALL CLAIMS COURT IN OKLAHOMA

The Oklahoma Small Claims Procedure Act was designed to allow people to gain access to a judge quickly and affordably. You are not required to have an attorney represent you.

STEP ONE: Determine if your Case is Eligible for Small Claims Court

Not every type of case is eligible for Oklahoma Small Claims Court. In general, the Small Claims Court can hear cases for the recovery of money for breach of contract, injuries, landlord and tenant disputes, and recovery of personal property.

However, **the amount to be recovered must be \$10,000 or less** (not including attorney's fees and other court costs).

Also, regardless of the amount of damages claimed, the Oklahoma Small Claims Court **cannot** hear cases involving libel, slander, probate matters, divorce, or other family law matters.

STEP TWO: File Claim with Court Clerk's Office

To start a lawsuit in Small Claims Court, the plaintiff (person who is bringing the claim) must first demand payment and then file the appropriate color-coded form with the clerk of the court in the appropriate county. For claims arising in Comanche County (Fort Sill and the surrounding area), the clerk's office is located at the Comanche County Courthouse, 315 SW 5th Street, Suite 205, Lawton, Oklahoma 73501, and the telephone number is (580) 250-5093.

The clerk will provide the plaintiff with the appropriate color-coded form based on the type of action the plaintiff wishes to file. The plaintiff must: (1) completely fill out the Small Claims Affidavit (the form); (2) sign and verify the document's truthfulness before the clerk or notary public; (3) return the form to the clerk in person or by mail; and (4) pay the appropriate filing fee. *Note: The clerk in Lawton accepts cash, debit/credit cards, cashier's check, or money order. No personal checks are accepted.*

STEP THREE: Ensure Proper Service to Other Party

The defendant (the party being sued) must be notified of the lawsuit. There are several ways in which this process can occur: (1) the clerk of the court can send the information via certified mail, (2) delivery by the Sheriff, or (3) a process server can be hired to deliver the paperwork to the defendant.

STEP FOUR: Establish the Court Date

The clerk of the court will assign a day and time for the parties to appear in court. The order shall be served upon the defendant at least seven days prior to the date in the order for the defendant to appear in court. Small Claims uses a weekly docket schedule which means many other cases will be set at the same time as your case.

The plaintiff should check to ensure that the court date has been set and that the defendant has been served. The plaintiff will need to appear in court, regardless of proper service. Failure of the plaintiff to appear in court could result in a dismissal of the lawsuit.

STEP FIVE: Prepare for Court Date

Bring to court all necessary documents and witnesses that pertain to the lawsuit. All documents should be organized for easy access. Your witnesses should be present and prepared to testify.

One of the most significant problems in Small Claims Court is the introduction of evidence. In Small Claims Court, a judge is required to apply evidence rules. For example, "Hearsay evidence" is a statement (written or oral) made out of court that is offered in court for the truth it asserts, such as repair statements, written statements, or sometimes even photographs. This type of evidence is not permitted because the source of the evidence is not present in court to be questioned. Therefore, bring the repairman, the eyewitness, the photographer, or the person who made the statement or authored the document to testify in court.

STEP SIX: Small Claims Court Date

At the scheduled time, the docket will be called. Respond with "Present" when your name is called. Speak up if you do not hear your name called.

If the plaintiff is present and there is "good service," but the defendant is NOT present, then plaintiff may be awarded a default judgment if the judge finds that there is adequate reason for the lawsuit. The judge will most likely ask a few questions to make such a determination. *Note: "good service" is defined under frequently asked questions.*

If only the plaintiff is present, but there was NOT "good service," the plaintiff must go to the clerk's office to file an affidavit to continue the lawsuit.

If the plaintiff is NOT present, but the defendant is present, the case will most likely be dismissed.

If neither party appears, the case could be stricken or dismissed depending on service.

After the docket is called, both parties will be instructed to go out in the hall and attempt to settle the claim once more.

If the parties are unable to reach a settlement, the case will proceed to trial.

However, if a settlement is reached, it must be presented to the judge for signature. Upon settlement, the order is presented to the judge.

- At the time of presentment, have all documentation ready if needed by the judge.
- Do not sign the order until instructed to do so by the judge.
- Once the order is signed, the plaintiff is responsible for filing the judgment with the clerk's office. Copies should be given to both sides.

STEP SEVEN: Trial (if applicable)

If a settlement is not reached, the case will immediately go to trial. The parties may present their case with evidence, witnesses, and testimony. The plaintiff's side will be presented first, and the defendant will be given an opportunity to ask questions of the plaintiff's witnesses. Next, the defendant's side will be presented and the plaintiff will be given an opportunity to ask questions of the defendant's witnesses. The burden of proof is by a preponderance of the evidence. To meet the preponderance of the evidence standard, one must show that his or her theory of the case is more likely than not correct. Upon the conclusion of both sides' presentations, the judge will make a decision and issue an award if appropriate.

Tips for Small Claims Court:

- ✓ Be early. Small claims dockets can overflow the courtroom's seating capacity.
- ✓ Bring all documents and witnesses with you to court.
- ✓ Ensure all documents are organized for easy access.
- ✓ Be respectful and courteous.
- ✓ Dress appropriately – remember that this is a court of law.
- ✓ The law that courts apply in small claims can be complicated. Therefore, make sure you are aware of what must be proven and how to prove it before going to court.

Frequently Asked Questions (FAQs)

1. Within which county may an action be filed?

An action must be filed in the appropriate county with the clerk of the court. The proper county can be: (1) where the defendant resides; (2) where the contract transaction occurred; (3) where the injury occurred; or (4) where the property is located.

2. What costs are associated with Small Claims Court?

The legislature sets the cost for filing and process of service, and therefore, it can change at any time. The clerk's office can assist in determining the exact cost

associated with a specific claim. In addition, the plaintiff will have to pay for the service of process to the defendant. The cost of service depends on the method of service, and typically ranges from \$10 to \$100.

3. What if I am unable to attend court on the date assigned?

Every effort should be made to appear in court on the date assigned to avoid a default judgment. However, if you are unable to keep the court date, contact the clerk's office immediately. If military service is the reason that you are unable to appear, you **may** have rights under the Servicemembers Civil Relief Act. Please speak to a Legal Assistance Attorney for more information.

4. What is a Counterclaim?

The defendant may assert a counterclaim against the plaintiff if filed seventy-two (72) hours prior to the court date. The defendant must present a signed, notarized answer to the clerk's office and \$20.00 filing fee. Forms are available in the clerk's office.

5. What is a process server?

An independent process server may be hired by the plaintiff to serve the Small Claims affidavit on the defendant. The cost of a process server is usually similar to the cost of the Sheriff.

6. What is "good service"?

"Good service" means that the defendant received notice of the lawsuit within the appropriate timeframes. The defendant shall have at least seven days notice to appear in court. If the order is not served to the defendant, then the plaintiff must apply to the clerk for a new order setting a new day for the appearance of the defendant. If service is not made in 180 days, the case may be dismissed unless the defendant was out of the country.

7. My witness does not want to appear, now what?

Upon application, the clerk of the court can issue a subpoena for the person, thing, or document to appear in court. Additional costs may be associated with each subpoena.

8. Must I have an attorney?

No. Individuals may represent themselves or a private attorney may be retained to represent them. The cost of attorney fees may be awarded in the judgment. However, in uncontested cases, such award would be limited to 10% of the amount in controversy.

9. Is there a jury?

This depends. Cases under \$1,500 are tried before a judge. In excess of \$1,500, either party may request a jury trial if such request is made in writing to the clerk two working days in advance. However, there are additional costs

associated with a jury trial including deposits for juror fees and the court reporter.

10. How did my claim get into district court?

A defendant may transfer the claim to district court upon a formal request and paying the transfer cost. The court has sole discretion as to whether the transfer request is granted. If granted, the plaintiff must re-file a formal petition within 20 days. The defendant must answer the claim within 20 days. In the event of a transfer, it is more likely that private attorneys will become involved.

11. How do I collect on a judgment?

If both parties are present and the case is settled or tried, the judge at the time of issuing the judgment may also enter an order to pay. If not, the judgment creditor (individual who obtained judgment) must attempt to contact and collect the amount from the judgment debtor (individual whom judgment is against). If the judgment debtor fails to pay the judgment, the judgment creditor may execute: (1) a lien on the defendant's property, (2) garnishment against assets or wages, or (3) compel a Hearing on Assets.

12. Can I appeal the decision?

Yes. The case may be appealed in the same manner as any other civil action. However, the appeal must conform to the rules and regulations of the courts, including legal form and citations.

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This Information Paper provides only basic information and is not intended to serve as a substitute for personal consultation with a Legal Assistance Attorney. To schedule an appointment with a Legal Assistance Attorney, please contact the Legal Assistance Office at (580) 442-5058. The Fort Sill Legal Assistance Office is located on the 4th Floor of Building 4700 (Welcome Center) at 4700 Mow-Way Road, Fort Sill, Oklahoma 73503.