



FORT SILL LEGAL ASSISTANCE

Small Claims Court

“Speedy Justice Between Parties”



Step One: Determine if Eligible for Small Claims Court

The following actions are permitted: (1) recovery of money for breach of contract, (2) recovery of money for injuries to person or property, (3) recovery of personal property, and (4) interpleader actions. However, the amount of the recovery must not exceed \$6,000, exclusive of attorney’s fees and other court costs.

The following actions are NOT permitted: (1) libel or (2) slander.

Step Two: File Affidavit with District Court Clerk’s Office

To start a lawsuit in small claims court, the plaintiff (person who is bringing the claim) completes a pre-printed form with the district court clerk in the appropriate county, and pays the required filing fee. The court clerk will provide the plaintiff with the appropriate form based on the type of action the plaintiff wishes to file.

The plaintiff must: (1) fill out the Small Claims Affidavit (the form); (2) sign and affirm the form before the clerk or notary public; (3) return the form to the clerk in person or by mail; and (4) include the appropriate filing fee.

For claims that occurred in Comanche County, the district court clerk is located at the Comanche County Courthouse, 315 SW 5th Street, Suite 205, Lawton, OK 73501, (580) 250-5093.

Note: The Comanche County Clerk of the Court accepts cash or credit card (excluding Discover).

Step Three: Ensure Proper Service on the Other Party

The defendant (the party being sued) must be properly notified of the lawsuit. There are several ways this may occur: (1) the clerk of the court can send the information via certified mail, (2) the sheriff may deliver the information, or (3) a process server can be hired to deliver the documents. The court clerk can assist in determining which process is appropriate depending on the plaintiff’s preference and the type of claim.

Step Four: Establish Court Date

The clerk of the court will assign a day and time for the parties to appear in court for a trial. The defendant must receive notice of the lawsuit at least seven days before the trial date. The plaintiff should call the clerk to ensure that the trial date has been set and that the defendant has been served. The plaintiff will need to appear in court, regardless of whether the defendant has been properly notified. Failure to appear in court could result in dismissal of the claim or an award against the person who did not appear. The court may dismiss the action after one year of inaction upon notice to the parties.

Step Five: Prepare for Court Date

Bring to court all documents and witnesses that pertain to the lawsuit. All documents should be organized for easy access. 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. 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 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 actually made the statement or authored the document to testify in court.

Step Six: Small Claims Court Date

- At 0900 on the trial date, the docket will be called. Respond “Present” when your name is called.
 - If the plaintiff is present and the defendant was properly notified but is NOT present, the plaintiff will be awarded judgment if the judge finds that there is adequate reason for the lawsuit. The judge will most likely ask a few questions to decide.
 - If the plaintiff is present and the defendant was NOT properly notified, 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 removed from the docket or dismissed depending on service.
- After the docket is called, parties will be instructed to go out in the hall and attempt to settle the claim once more.
 - If a settlement is reached, it will be presented to the judge for signature.
 - If the parties are unable to reach a settlement, the case will proceed to trial.
- 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.

Step Seven: Trial (if applicable)

If a settlement is not agreed to, the case will immediately go to trial, which is informal. First, the plaintiff will state his or her case and the defendant will be given an opportunity to ask questions. Next the defendant will state his or her case and the plaintiff will be given an opportunity to ask questions. The parties may state his or her case using evidence, witnesses, and by testifying under oath. Upon the conclusion of the parties’ cases, the judge will make a decision and issue a judgment if appropriate.

Tips for Small Claims Court

- ✓ Be on time.
- ✓ Bring all documents and witnesses to court.
- ✓ Ensure all documents are organized for easy access.
- ✓ Be respectful and courteous.
- ✓ Dress appropriately - remember 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.
- ✓ The Legal Assistance Office may advise clients on the law and procedures but cannot represent clients in court.

Frequently Asked Questions: Small Claims Court

1. In which county do I file?

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 was entered into; (3) where the injury occurred; or (4) where the property is located.

2. What costs are associated with small claims court?

There is a cost for filing and service of process (notification to the defendant). Filing fees vary depending on amount requested in damages, generally ranging from \$45 to \$158. The clerk's office can assist in determining the exact cost of a specific claim. In addition, the plaintiff will have to pay for serving notice of the lawsuit on the defendant. The cost of service depends on the method of service, which generally ranges from \$10 to \$50.

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 contact a Legal Assistance Attorney for more information.

4. What is a Counterclaim?

A counterclaim is a claim the defendant has against the plaintiff. The defendant may file a counterclaim against the plaintiff if filed at least 72 hours before the trial date. The defendant must present a signed and notarized counterclaim to the clerk's office and pay a \$20 filing fee. Forms are available in the clerk's office.

5. What is a process server?

An independent process server is hired by the plaintiff to serve notice of the lawsuit on the defendant. The cost of a process server is usually similar to the cost of the sheriff, who can also provide service. A list of process servers is available at the clerk's office.

6. What is "properly notified"?

"Properly notified" means that the defendant received notice of the lawsuit within the appropriate timeframes and in the appropriate manner. The defendant must have at least 7 days notice to appear in court. If the defendant is not properly notified, 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 will 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. 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. If an attorney is utilized, the cost of attorney fees may be awarded in some cases, if requested. However, in uncontested cases attorney fees are limited to 10% of the amount of the judgment.

9. Is there a jury?

Not normally. If either party wants a jury trial, and if the party's claim exceeds \$1,500, the party must notify the court clerk in writing at least two working days prior to the trial date and must pay the required deposit. There are additional costs associated with a jury trial, which include a \$300 jury fee deposit and \$50 court reporter fee.

10. How did my claim get into district court?

A defendant may ask that the lawsuit be transferred to the district court by making a formal request (called a motion) and paying a transfer cost. The court has sole discretion as to whether the transfer request should be granted. If granted, the plaintiff must re-file a formal petition in district court within 20 days. The defendant must answer the re-filed claim within 20 days. In the event of a transfer, it is more likely that private attorneys will be 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 directing the judgment debtor to make periodic payments toward the judgment. If not, the individual who succeeded must attempt to contact and collect the amount from the judgment debtor. If the judgment debtor fails to pay, the successful party may execute: (1) a lien on the debtor's property, (2) garnishment against the debtor's assets or wages, or (3) compel the debtor to come to court for a Hearing on Assets to determine which assets are available to satisfy the judgment.

12. Can I appeal the decision?

Yes. The case may be appealed in the same manner as any other civil action. However, on appeal the case must conform to the rules and regulations of the courts, including formal pleadings and citations, which generally requires the assistance of a private attorney.

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If you have questions concerning information in this fact sheet, please contact the Fort Sill Legal Assistance Office at (580) 442-5058 or (580) 442-5059. Our hours of operation are Monday, Tuesday, Wednesday, and Friday, 0800-1600, and Thursday 1200-1600. The Fort Sill Legal Assistance office is located on the 4th floor of Building 4700, Hartell Hall on Mow-way Road.