

Instructions — Small Claims Action

Briefly, the following steps are listed for your information to start or defend a small claims action:

1. The amount demanded in the complaint cannot exceed \$7,000 excluding costs, and the Defendant must be able to be served within the county issuing the complaint.
2. A written complaint must be prepared and SWORN TO before the Court. A complaint is a brief, concise statement of the facts making up your complaint. You must include the dollar amount requested, and/or the return of specific property, and the date of the transaction. You must prepare a praecipe (directive) for the Sheriff's office, constable, or process server. For each person named in your complaint, you will need 2 copies of the complaint, 2 copies of the Notice to Defendant, and 1 praecipe. The forms are self explanatory and easy to fill out. All papers necessary are available at the Small Claims Division of Justice Court. A copy of the pamphlet prepared by the Attorney General **must be given to the Plaintiff and a copy attached to the Notice to Defendant.**
3. After the papers are properly completed, return them to the clerk at justice court to be SWORN TO, and for filing. The filing fee is **\$30** for the Justice Court. There are additional costs for service of the papers by the Sheriff's office or process server. The costs may vary from area to area and will include mileage costs. The Sheriff requires service payment upfront. Contact the process server of your choice for payment requirements. If you obtain a judgment in court, you may be entitled to a full reimbursement of the fees you paid to pursue this case in court.
4. The Defendant or opposing party will be notified of the lawsuit and date of trial by service of the papers by the Sheriff or process server. After the papers are served, the Notice to Defendant will be returned to the Court with an accounting of the fees spent. If the Notice to Defendant is returned to the Plaintiff, the Notice must be returned to the Court immediately.
5. If the "Notice to Defendant" is not served at least 5 days prior to the date of trial, a new trial date will be set by the Court. You will be called for further instructions on re-service, new fees for process server will be required. The "reset" procedure may be done as many times as is necessary, up to one (1) year after commencement of action to serve to serve the Defendant.
6. If the parties reach an agreement or solution prior to trial, both parties are required to notify the Court.
7. If a counterclaim is filed, it must be filed with the Court and served on the Plaintiff at least 72 hours prior to the date of the trial. Service of the counterclaim on the Plaintiff, is made by the Sheriff or process server in the same manner as the service of the Notice to Defendant.

8. The Defendant may file a counterclaim against the Plaintiff if the amount claimed arises from the same transaction or occurrence as the Plaintiff's complaint AND does not exceed \$6,500. If the Defendant does not appear, a default judgment may be issued after the Plaintiff presents all evidence necessary to prove the allegations of the complaint. On the date for trial, if the Defendant appears they may contest or file a counterclaim, a \$20 fee will be assessed the Defendant.
9. The trial is an informal proceeding and will be recorded either electronically or stenographically.
10. No attorney is allowed, unless all parties have an attorney.
11. The Defendant may file a Notice of Removal in a small claims action and have the entire case transferred to the regular civil Justice Court. If the Defendant DOES NOT FILE A NOTICE OF REMOVAL WITHIN 10 DAYS AFTER RECEIVING SERVICE OF THE NOTICE TO DEFENDANT, THE DEFENDANT WAIVES THE RIGHT TO A JURY TRIAL AND THE REPRESENTATION BY AN ATTORNEY.
12. At the trial, the Court will give a brief review of the procedure that will be followed during the proceedings. The parties will be required to prove to the Court the facts of the complaint and/or counterclaim. At the trial, each party will be expected to bring all of their witnesses, written documents (i.e., leases, contracts, bills of sale), or other evidence needed for judgment.
13. After the trial is held, the Court will issue a judgment based on the facts presented in the case. When the trial is concluded, the Judge will make the findings and enter judgment. Either party will have 10 days to file a written notice of appeal with the Court and complete the procedures necessary. An appeal to the District Court is limited to questions of law only. You will be required to pay a filing fee to the Clerk of the District Court and post an appeal undertaking and two to three times the judgment amount, as set by the Justice of the Peace.

All evidence may be held for thirty (30) days after the judgment is issued. After that time, you may pick up your evidence from the court file. The Court will not mail the evidence back to you. If an appeal is filed, the evidence is transferred to the District Court
14. If you obtain a judgment in Justice Court either by default or after a trial is held, you may proceed to the actual collection of the judgment. Payment of the judgment is due immediately. However, we recommend that you wait ten (10) days after judgment before you begin the collection process.
15. If the parties wish to negotiate a payment plan for the payment of the judgment, you may do so. Any payments are handled directly between the parties involved.
16. If the winning party does not receive payments in a timely fashion or if no payment arrangement is made, you may ask the Court to issue an execution. An execution is an order to the Sheriff/constable/levying officer to assist your collection process. You may execute against a savings or checking account, personal property (not a necessity of life), wages, vehicles, campers, or any other assets the judgment debtor may have.

You will be required to fill out a praecipe specifically identifying “what” you want to execute against. This includes bank name and address, title and identification numbers, color, make, model and number, and any other information that will specifically identify the property or item to be seized. You must advise the Sheriff/constable/levying officer where the property you wish to have seized is located and any and all other pertinent information.

You must research the item you want to have seized to be sure that the item is free from lien. If there is a lien on an item, you will be responsible to the lien holder for the amount due.

There is an additional fee required for service of the execution. Fees may vary by process server or sheriff department. These costs will be added to the judgment as accruing costs. Any monies collected, such as wages or money retrieved from a checking or savings account, will be distributed to you, after the serving officer collects his costs. If personal property is seized, the property will be sold at Sheriff’s sale and the proceeds, less the Sheriff’s costs, will be given to you.

When you file an execution, be aware that you may not get the entire amount due the first time. Executions are valid for 180 days. It may be necessary to file more than one execution. The Debtor is allowed to withhold a certain percentage from execution to support his/her family or for the necessities of life. An execution may be served numerous times while it is valid. Only one execution may be issued at one time. A return of execution, with or without anything being received, must be filed with the Court before another execution may be issued.

17. You may also request the Court for a “Show Cause Hearing” and examination of the judgment debtor. The debtor will be subpoenaed into Court and ordered to show cause why no effort has been made to satisfy the judgment. This hearing will only be set after you have attempted to execute against the debtor for the judgment due.

At the hearing, you will be allowed to ask the debtor questions about his income, monies available, personal property value, spouse’s income, and any other questions regarding the debtor’s financial history to satisfy the amount of the judgment.

18. You may also file a “Certification of Transcript of Docket” with the Clerk of the District Court that will place a lien on any real property (land or home) that the debtor may have. The property will not be sold without satisfaction of the judgment prior to sale.
19. Your judgment is good for ten (10) years, so although you have been unable to collect on the judgment recently if the debtor should get a job within the time limit, you may execute any time within the ten (10) years. The judgment will also be recorded against the debtor’s credit record with the Credit Bureau.
20. **You must notify the Court as soon as the judgment is satisfied.** You will be responsible if the judgment is satisfied and not cleared from the debtor’s record in Court. If a satisfaction of judgment is not received, you may be summoned to court.

NEITHER THE JUDGE NOR THE CLERK ARE ALLOWED TO GIVE YOU LEGAL ADVICE. IT IS PROHIBITED BY LAW !! WE MAY ONLY ASSIST YOU BY GIVING YOU THE NECESSARY FORMS, THE INSTRUCTIONS, AND ADVISING YOU OF THE OPTIONS AVAILABLE TO YOU TO PURSUE OR DEFEND A SMALL CLAIMS ACTION. If you require assistance in filing out the necessary forms, you can contact the legal self- help desk at 406-582-2158 or see the advice of an attorney.

An attorney is not necessary to pursue a small claims action or defend against one. HOWEVER, if you feel you need an attorney, you have a legal right to obtain one. You should review Paragraphs 10 and 11 of this instruction sheet on the process regarding an attorney. If you do not understand these forms or the instructions, please contact an attorney.