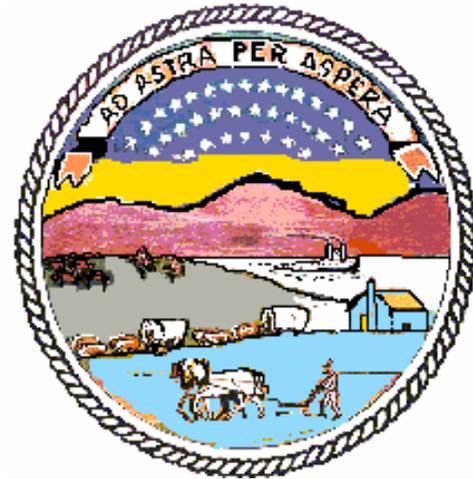


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SMALL CLAIMS PROCEDURE



7th Judicial District
Douglas County District Court
July 2006

SMALL CLAIMS PROCEDURES

This brochure will help you decide whether to use a Kansas Small Claims Court to assist you in resolving a problem. It describes the procedures used in the Seventh Judicial District (Douglas County). Procedures may vary from county to county.

The court cannot guarantee your success, nor will it collect judgments for you. Neither court personnel nor the judge can give you legal advice about a small claims case.

Who can be sued in small claims court?

You may sue any person or business you believe owes you money or property except a state or other governmental unit.

Are there restrictions on the amount of my claim?

Claims may not be greater than \$4,000, plus interest, costs, and any special damages or penalties provided by law.

Who may sue in small claims court?

You must be 18 years of age to file, or it may be filed on behalf of a minor by an adult representative. Any business other than collection agencies may use small claims court. No one can file more than twenty (20) cases during one calendar year (January 1 - December 31).

What is the filing fee?

The filing fee for a claim of \$500 or less is **\$30**.
The filing fee for a claim of \$500.01 - \$4000 is **\$50**.

What legal options are open to me besides small claims court?

If you have a complex case or one that involves a claim of more than \$4,000, you may wish to consult an attorney about other forms of legal action. An attorney can tell you what these other actions will cost and can help you decide what course is best for you.

How do I file a claim?

To file a case, you must fill out a petition which states your name and address, the name and address of the person you are suing, the amount of money you claim or the property you seek to have returned to you, and the reasons you are asking for the money or property.

Your petition must be filed in the office of the Clerk of the District Court. When you go to the clerk's office to file your petition, you should bring with you the required filing fee and you should know the following information:

1. The exact amount you want to recover, including interest you claim is owed.
2. The exact description of property you seek to recover.
3. The name and address of the person you are suing, or if a business, the exact name and address of the owner of the business.
4. A description of the incident or event which gave rise to your claim.

If you decide to use the small claims procedure, you may obtain forms from the Clerk of the District Court. You may fill out the petition and summons at the clerk's office or you may take the forms home to complete and file later. **The petition must be typed or printed legibly in black ink** and must be signed in front of a notary public or deputy clerk of the district court. You should have proof of identification at the time of signing. An original and two (2) copies must be filed. You will be charged for copying expenses if an insufficient number of copies are furnished.

The person you sue cannot be served with a summons at work unless you have filed an affidavit stating that the defendant is a nonresident of Kansas but employed in Kansas, or that you do not know the defendant's place of residence. The sheriff must be able to locate the person to be sued so he or she can be legally served with the summons to appear in court. It is your responsibility to provide the correct addresses on the forms.

*The court will only have jurisdiction to hear the case if the defendant is actually served. The filing fee will NOT be refunded even if service is not obtained.

Where should I file a small claim?

If you are suing a Kansas resident, you may file your case in the district court of the county in which:

1. The defendant lives;
2. You live, if defendant is served there;*
3. The defendant works, if defendant is served there;*
4. The property to be recovered is located if the action is to recover the possession of property;
5. The estate of a decedent is being probated if:
 - (a) The decedent would have been a co-defendant, and
 - (b) A claim has been duly exhibited in the probate proceeding;
6. The incident about which you are suing occurred if the defendant resided in that county when the incident arose.

If you are suing a Kansas corporation or a foreign corporation qualified to do business in Kansas, you may file your case in the district court of the county in which:

1. The defendant has a registered office;
2. The defendant is doing business at the time the suit is filed;
3. The county where the incident about which you are suing occurred;
4. The property to be recovered is located if the action is to recover the possession of property.

If you are suing someone who does not reside in Kansas or a corporation not qualified to do business in this state, you may file your case in the district court of the county in which:

1. You live;
2. The defendant can be and is served;*
3. The defendant is doing business at the time your case is filed;
4. The property to be recovered is located if the action is to recover the possession of property;
5. The defendant has property; or
6. The incident about which you are suing occurred.

What happens after the petition is filed?

A trial date will be set at the time the petition is filed. The sheriff will attempt to serve the defendant at the address you've provided on your petition and summons. If the defendant cannot be located, the trial will be canceled. If you subsequently find another address where the defendant may be served, you must fill out an alias summons (second summons) and the sheriff will then try to serve the defendant again.

What if you are being sued in small claims court?

If you are sued and you agree that you owe the other party money or property, you may pay what you owe or return the property and you will not have to appear in court. Be sure that the court is notified in writing of any settlement of the suit. If you do not settle the claim against you before the trial date, you must appear in court at the scheduled time or the judge can rule against you. If the judge rules against you, you will have a legal obligation to pay what the judge orders you to pay. However, you may appeal the judge's decision (see p. 5).

If you have a claim against the plaintiff in connection with the same matter, you may file a counterclaim. You may do this by filling out the "defendant's claim" form that comes with the summons and return it to the office of the Clerk of the District Court as soon as possible. You may be responsible for additional court costs if your claim is more than the amount authorized for the original filing fee.

What should the plaintiff do if the defendant settles the dispute before trial?

If the defendant pays your claim before the trial, you must notify the court in person or in writing. A dismissal form will be sent to you and you must sign and return it to the court.

Trials

In case of an emergency, the judge may grant a change of the date of trial. The party who is seeking to change the date must contact the court and request the change. Whether or not a continuance (change in date) is granted is entirely within the discretion of the judge.

Parties should report to the hearing. Each case is allotted 15 minutes and trials are conducted informally by the judge. Parties must present their own cases and may not be represented by an attorney. The plaintiff has the burden to prove that he or she is entitled to prevail on his or her claim. If a counterclaim is filed, the defendant has the burden to prove he or she is entitled to prevail on his or her claim.

Each party should bring to trial all documents, evidence, or other proof necessary to prove his or her claim. Examples of evidence include:

- Witnesses
- Photos
- Bills
- Contracts
- Receipts

It is each party's responsibility to summons to court the witnesses necessary to present his or her case. If the attendance of a witness cannot be arranged by agreement with the witness, you may file a written request to have a subpoena issued for that witness. The written request must be filed with the Clerk of the District Court at least eight (8) working days prior to the date of the trial and must be accompanied by a check for \$10.00 plus mileage from the witnesses' home to the courthouse, made payable to the witness. The judge may not consider the written statements of witnesses who are not present at trial.

Judgment will be rendered by the judge after both parties have had an opportunity to present their cases. If the defendant does not appear, plaintiff may be granted a default judgment. If the plaintiff fails to appear, the court may dismiss the case. If a defendant's claim has been filed, the defendant may be granted a default judgment against the plaintiff if the plaintiff fails to appear.

How do I appeal the judge's decision?

Any party has the right to appeal by filing a "Notice of Appeal" with the Clerk of the District Court within ten (10) days of the date judgment is entered. A filing fee of \$147.00 must accompany the Notice of Appeal. A new trial will be held before a district court judge other than the judge from whom the appeal is taken. Either party may be represented by an attorney at the new trial. If you appeal but do not prevail you will be required to pay the reasonable attorney's fees of the other party.

How do I collect my judgment?

You may hire an attorney to help you collect the judgment or you may attempt to collect the judgment yourself. When judgment is granted in your favor, you are given a "Judgment Debtor's Statement of Assets" form to help in the collection process. Unless an appeal has been filed or full payment has been made within 15 days of the date of judgment, the judgment creditor will be required to:

1. Send a copy of the journal entry of judgment and the blank "Judgment Debtor's Statement of Assets" form to the judgment debtor.
2. File proof of mailing with the Clerk of the District Court. The debtor has 30 days to either pay the judgment or complete the "Judgment Debtor's Statement of Assets" form and return it to the Clerk, who will send a copy to the creditor.

If the debtor does not pay the judgment or return the statement, the

creditor may request that the debtor be called into court to show cause why he or she should not be punished for contempt of court. The Clerk of the District Court has a form for this procedure that you will need to complete.

Garnishment Procedures

General Rules:

A request for garnishment may be issued ten (10) days after judgment if no payment has been made.

A garnishment is used to attach a bank account (other property) or to attach wages (earnings).

You must provide the addresses for the garnishee, plaintiff, and defendant and must fill out a Request for Garnishment. A garnishee is the person or place of business that you wish to have withhold the judgment debtor's money. Forms are available in the court clerk's office. The first Answer of Garnishee for earnings will cover the month of the day when the order of garnishment is served. All subsequent Answers will cover a calendar month. The Answer of Garnishee for non-earnings will cover money or property being held by the garnishee on the day the order of garnishment is served.

You are allowed to request two garnishments per month per defendant, but only one may be made against earnings in a given month.

You must fill out a new Request for Garnishment form each time you wish to garnish non-earnings. For earnings garnishment, you will file only one Request for Garnishment. This will be a standing garnishment and continue month-to-month for that employer until you release the garnishment by filing a Release of Garnishment. You must file a Release of Garnishment in order to garnish a different place of employment.

Procedure:

Fill out a request for garnishment form and file it with the clerk's office. The clerk will then issue an order of garnishment and have the sheriff serve it upon the garnishee.

When the sheriff has completed service, you will receive a copy of the service information indicating who was served and when. You must send a Notice of Garnishment to the judgment debtor, along with a Notice of Exemptions and Request for Hearing form, which can be obtained at the clerk's office. If a hearing is requested, the clerk will set the hearing within 5-10 days of the request. The party requesting a hearing must notify the other party.

For earnings garnishments, the garnishee has until the 15th of the month to file an answer. The earnings garnishment answer will be sent directly to you and the judgment debtor within 15 days following the end of each month. If the garnishee states that the judgment debtor is not an employee, you must file a Release of Garnishment with the clerk. You may not file subsequent Request for Earnings Garnishments until this has been done. If the employer is holding money, they should automatically send the money to you after a 10 day waiting period.

For non-earnings garnishment, the garnishee has 10 days to file an answer. This answer is filed with the Clerk of the Court. If anything is being held, you will be mailed an Order to Pay In form, which may be used to release the garnishment, do a partial release, or order the money being held by the garnishee paid to you. You will need to complete the Order to Pay In form and return it to the clerk's office. The judge may sign the Order to Pay In after a 10 day period. A copy will be sent to the garnishee, instructing it how to pay the money it holds.

Within 10 days after the garnishee files its answer, the plaintiff and defendant have the right to contest any statement in the answer. An Order to Pay In (non-earnings) form will not be issued until this period has passed or any controversy raised by either party has been resolved. If either party replies disputing any statement in the answer of the garnishee, the contesting party must file that reply with the court and serve a copy to the other party, all judgment creditors and the garnishee. The contesting party shall schedule a hearing with the court within 30 days after filing the reply.

You are required to maintain an account of all monies and credits applied to the judgment, all interest accrued, and the remaining unsatisfied balance. The court may, at any time, require you to provide this information.

When you have collected all money due you, you must file a Satisfaction of Judgment. Forms are available in the clerk's office.

If you have questions concerning this procedure, you may want to contact an attorney to further explain this procedure or help you in carry out the required steps.

Legal Terms You Should Know

Alias Summons - a second or subsequent summons used if the first summons is not properly served

Answer - a statement of the defendant's response to the claims made in plaintiff's petition

Appeal - a legal proceeding in which a party asks a higher court to review the action taken by a lower court

Counterclaim - a legal claim made by the defendant against the plaintiff

Defendant - a person who is being sued

Garnishment – when a judgment creditor seeks to obtain money owed to or held on behalf of the judgment debtor by a third party

Judgment - the official decision of a court determining the rights of the parties involved in a legal action. This is usually set out in a document entitled "Journal Entry of Judgment."

Judgment Creditor – the person that money is owed to as a result of a judgment in court

Judgment Debtor – the person who owes money as a result of a judgment in court

Petition - a written form filed by the plaintiff to begin legal action that contains the basis for the claim and the request for payment of money or return of property

Plaintiff – a person who brings a legal action; the party who complains or sues

Service - the presentation of a summons to the defendant in a legal action

Summons - an order directing a sheriff or other process server to notify the person named that a legal action has been commenced against them and that they are required to appear within a certain time to answer the petition

Subpoena - an order requiring a witness to appear and testify at a certain time and place