



Should You Go to Small Claims Court?

Q: What is "small claims"?

A: An action for recovery of money based on breach of contract, for injuries or to recover personal property may be brought in Small Claims Court if the plaintiff is willing to accept a recovery that does not exceed \$10,000. The court clerk in your county can help you with small claims matters. Small Claims Court is not available for actions claiming libel or slander.

Q: Why Small Claims Court?

A: The small claims procedure was introduced to allow citizens to bring claims before a judge quickly. The Legislature has provided that there be no pleadings in small claims except those needed to state the claim or counterclaim. Court clerks in almost all counties have the required forms available. The terms are also available online at www.oscn.net.

Q: Is this quicker than regular or bigger cases?

A: Yes. It can take more than a year for a regular civil case to come to trial. Small claims cases are required by law to be heard not more than 60 days after the claim is filed. However, a defendant must be properly served with the lawsuit in both small claims and regular civil lawsuits. If a plaintiff files a small claims lawsuit and is unable to locate the defendant, it may take two to three months before the judgment is rendered by the court.

Q: Who may use small claims?

A: Anyone who has a claim against another in Oklahoma may use the small claims procedure. Anyone seeking to use small claims will be limited to a recovery of \$10,000. The person must pay the filing fee prescribed by law. Any company that may otherwise bring a lawsuit in Oklahoma may use the small claims procedure. However, no action may be brought under small claims procedure by any collection agency or collection agent or any assignee of a claim except under certain circumstances. A person who is in jail or prison cannot be a small claims plaintiff.

Q: May I use an attorney?

A: Of course. All parties are entitled to be represented by an attorney in every case in state court in Oklahoma. Either party may use an attorney even if the other side does not.

Q: Must I use an attorney?

A: No. An individual may be self-represented in small claims; a company may be represented by an officer or full-time employee. There is no requirement to be represented by an attorney. Judges are required to make the small claims procedure informal. Even in those counties where the small claims docket is a very busy docket, the judges strive to simplify procedures for unrepresented parties.

However, the judge is required by law to apply evidence rules even in small claims cases. The judge cannot fulfill the role of an attorney for either side; therefore, parties must be familiar enough with their case and with restrictions on the use of evidence to be sure they are able to present their case properly.

Q: What is the most significant evidence problem?

A: The use of hearsay evidence is the most important evidence problem in small claims. Some parties do not realize, for example, that an estimate from a reputable automobile repair shop or a written statement from someone who saw an accident is not admissible in court. The reason for this is the estimate or the statement of the out-of-court witness is "hearsay evidence." Hearsay evidence is not admissible in court because the source of the evidence is not available to be cross-examined. Cross-examination is a precious right every party has in every case in Oklahoma. However, an estimate or other document may be allowed into evidence if the person who prepared the document is present to testify.

If you are not represented by a lawyer, the best thing to do, whether you are a plaintiff or defendant, is bring everything to trial that pertains to the lawsuit. Also, be sure all persons who know about the facts are available to testify.

Q: How can I avoid evidence problems?

A: Be certain you have in court all of the documents and witnesses who know about your case. If a document was prepared by someone who is not a party to the case, that person must be present to testify about the document. The court clerk in your county can issue subpoenas for witnesses and for witnesses with documents.

Q: When do I go to court?

A: When you file your claim in the office of your county's court clerk, the court clerk will assign a day and time for your trial.

Q: How do I let the defendant know I have sued them?

A: Unless service by the sheriff is requested, the court clerk will serve an order on the defendant by certified mail compelling the defendant to be in court on trial day. You must be sure you give the court clerk the defendant's mailing address so the defendant can be served. Service may also be made by private process server; however, extra costs may apply.

Q: What if the defendant does not appear?

A: If the defendant has been properly served and does not appear in court, you will normally be entitled to a default judgment if you can prove your claim is valid. The judge will ask you enough questions about the case to establish the validity of your claim and then

enter judgment in the amount you are entitled to have, which may include costs of filing the action.

If the defendant has not been properly served, you will not be entitled to default judgment, but you will be entitled to continue to try to properly serve the defendant again. This is called using "alias" (or substitute) process. This is used anytime there is a problem serving the defendant the first time. The court clerk can help with alias process.

Q: How do I collect my judgment?

A: All of the "post-judgment remedies" available to any party are available to the successful small claims party. If the defendant simply does not pay, you may execute on the defendant's property, you may have a garnishment issued against the defendant's assets or wages and you may compel the defendant to come to court for a Hearing on Assets to determine what assets are available. In addition, where both parties are present and a case is tried or settled and the judge enters judgment, the judge may also enter an order to pay. This is like an asset hearing held right at the time of trial.

Q: May I settle a small claim?

A: Yes, at any time before or after your trial. Due to the large volume of civil claims, courts always encourage claims to be settled. If your claim is settled before trial (that is, if all the issues have been resolved between the parties and all that remains is for the judge to approve the settlement and approve the agreed order for payment), you should inform the judge of that when you are asked. During the hearing, most judges will ask whether the case has been or can be settled.

Q: What is a counterclaim?

A: When a person (the plaintiff) files a small claims case, the defendant has a right to assert claims against the plaintiff in the form of a counterclaim. If the counterclaim is filed properly and at least 72 hours prior to the time set for the defendant's appearance, the judge will try the counterclaim along with the original claim and give judgment in both. Counterclaims in Small Claims Court are also limited to a certain dollar amount.

Q: Must I choose small claims?

A: No. If you have a claim for \$10,000 or less and want to use the regular civil docket, you are perfectly entitled to do so; however, the costs are higher, and it will take more time before judgment is rendered. If you are sued in small claims, you may remove the case to the civil docket in limited circumstances. You must file an application for removal with the court clerk and pay the required fee, and the case must be removed to the civil docket. The case will then proceed as a civil docket case.

Q: Is there a jury in Small Claims Court?

A: 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 time set for the defendant's appearance and must pay the required fee.

Q: Is there a "record"?

A: Not normally. A record is a verbatim report of the trial taken down by the court reporter. The law provides that if either party desires a record, they must notify the court clerk in writing of that desire at least two working days prior to the defendant's appearance and pay the required fee. In case of appeal, a record will provide the best reference for what happened in the trial court, but there is a method for appealing on a written summary of the proceedings without a record.

Caution: *The law the court must apply may be very complex, even in small claims. You should make certain you are comfortable with what you must prove and how to do it before you represent yourself in any court hearing or trial. If you are unsure about proceeding with a lawsuit, contact an attorney.*

(Revised November 2018)

All Rights Reserved

Copyright ©2018 Oklahoma Bar Association



Prepared and Issued by
Oklahoma Bar Association
1901 N. Lincoln Blvd.
P.O. Box 53036
Oklahoma City, OK 73152