

4th Judicial District of Kansas

SMALL CLAIMS COURT



A GUIDE FOR WORKING WITH YOUR LOCAL COURT

Fourth Judicial District of Kansas

Website: <http://www.franklincoks.org/4thdistict>

<u>Anderson County</u>	<u>Coffey County</u>	<u>Franklin County</u>	<u>Osage County</u>
100 E 4 th	6 th and Neosho	301 S Main	717 Topeka Ave.
Garnett, KS	Burlington, KS	Ottawa, KS	Lyndon, KS
785-448-6886	620-364-8628	785-242-6000	785-828-4713

WHAT IS SMALL CLAIMS COURT?

The purpose of this information is to acquaint you with how the Small Claims procedure works and help you decide whether filing a Small Claims case is how you want to solve your problem. Please remember that procedures vary from county to county.

The Basics

Small claims court is only for **simple** cases to recover money or property worth less than \$4,000. If you seek more than \$4,000 or require the judge to rule on matters of law, the claim is no longer “simple” and you should consult an attorney. If the amount you seek is more than \$4,000, to use Small Claims court, you must agree to a judgment of no more than \$4,000.

No Lawyer, No Jury

In most instances, you cannot be represented by a lawyer in Small Claims cases. You may consult with a lawyer for legal advice, and they may be present in the courtroom during the trial if you wish. You cannot have a jury trial in Small Claims court.

What Choices Are Available Besides Small Claims Court?

If you have a complex case or one that involves a claim in excess of \$4000, you may wish to contact an attorney regarding other forms of legal action such as filing a Limited Action case or Civil case.

Corporate Involvement

The Small Claims Act allows individuals and businesses to use non-lawyer representatives in this court. Collection agencies may not use the court to collect for their clients.

What is Required to File a Case in Small Claims Court?

The following restrictions apply to Small Claims cases:

Who can file? Those who wish to file a Small Claims case must be at least 18 years of age or be represented by someone 18 or older.

Cost of filing. A filing fee of \$47.50 is required for claims of \$500 or less. Claims in the amount of \$500.01 to \$4,000 require a filing fee of \$67.50. **Filing fees are not refunded if the case is filed in error or in the wrong county.** There is also a \$15.00 sheriff's process fee for service.

Limits on size of suits. Claims cannot be greater than \$4,000 exclusive of interest, costs, and any damages for worthless checks that maybe awarded.

Limits on number of actions. No individual or business can file more than 20 Small Claims cases in one calendar year.

Information needed to file. To file a case, you must pay the filing fee and fill out a Petition showing your name and address, the name and address of the person being sued, the amount of money or property you are asking for, and why you are asking for it. You must provide information to locate the people being sued so they can be legally served an official Summons. It is your responsibility to furnish the address to the clerk's office when you file the case.

Who can be sued in Small Claims?

Any person or business may sue any person(s) or business they believe owes them money.

1. You must file the case in the county where that person(s) or business resides, or in the county that the transaction took place if the defendant was a resident at the time, or the county where the defendant can be served with a summons.

How Do I File a Claim?

You can file your claim by going to the clerk of the district court. You should have with you the required filing fee and the name and address of the person or people you are suing. You should know the exact amount you want to recover and be prepared to give a written explanation of your case. The Petition must be notarized or signed before the clerk.

After the Claim is Filed

Once you have filed your claim, you will be notified of a hearing date. A Summons, along with a copy of your Petition, will be served by the sheriff's department to the person being sued. If the defendant cannot be located, you should contact the court for a continuance to give you more time to find a good address for the defendant. It is your responsibility to contact the clerk before each court date with a new address or whatever information you may have so the person or persons can be found. If you settle the case before the hearing date, notify the court at once so the case can be dismissed.

What if You are Being Sued in Small Claims Court?

As a defendant, you will be served with a Summons by the sheriff's department. However, if you have a claim against the plaintiff about the same matter, you may file a counterclaim. Fill out the Defendant's Claim form that should accompany the Summons and return it as soon as possible to the court where the hearing is to take place.

If you are being sued in Small Claims court and you do owe the other party money or property, you will not have to appear in court if you arrange with the other party to pay what you owe. Be sure the court is notified in writing of a settlement.

If you do not settle the claim out of court, you must appear at the time scheduled, or the judge can rule against you. The judge will give both you and the other party a chance to speak before making a decision. If the judge decides against you, you are legally bound to pay the plaintiff whatever the judge orders. You may appeal the judge's decision.

Your Day in Court

Small Claims court proceedings are conducted informally by the judge. You should be prepared when you arrive for your hearing to clearly explain your side of the case. Be respectful and courteous to everyone involved in the case even if other people are not courteous. Bring whatever evidence, documents, or other materials you believe you need to prove or support your case. Either side may subpoena witnesses. However, subpoenas take time for service, so if you need subpoenas, file a request for them several weeks before the trial date. A witness fee and sheriff's fee must be paid to subpoena a witness who is unwilling to appear. Both sides will be given time to explain their positions or question and cross examine witnesses. The judge will make a decision after all the evidence is offered.

Counterclaims - If the defendant filed a counterclaim against a plaintiff to offset what the plaintiff says is owed, the counterclaim may be heard at the same time. Depending on the circumstances, the judge may either make a decision immediately after hearing both sides or may continue the case to another date.

Default Judgment - If either party was properly served and does not show for the hearing, the judge may declare the absent party in default and award judgment to the other party.

Civility and Manners

Forget what you see on television about how courtrooms operate. Kansas Small Claims courts are not televised. Being rude, argumentative, or belligerent to another person may make for good television, but it will not help your case in court. You will be given an opportunity to tell your side of the story. You will not be given an opportunity for theatrics. Tell your side truthfully, concisely, and politely.

Defenses in Small Claims Court

Briefly, the defenses for Small Claims cases include, but are not limited to:

- whether the number of suits filed exceed the statutory maximum
- whether the representative of the other party is an attorney or former attorney
- whether the amount in controversy was assigned from the real creditor to the plaintiff
- whether venue is correct

Should You Appeal a Small Claims Decision?

Following the judgment, either party has the right to appeal and get a new hearing from a new judge. These appeals must be filed in district court, and there are no simplified forms or procedures. The docket fee for an appeal is \$195.00. A jury may be used on appeal.

The loser of the Small Claims case has 14 days after the judgment is entered to file an appeal. The clerk can furnish you with an appeal form.

You may consult with an attorney in regard to an appeal of your case. An attorney may represent you during the appeal process.

Collecting Your Money or Property

Even if you win your case in Small Claims court, neither the court nor the clerk's office can guarantee you will collect your money. Judges and court officials are not responsible for the collection of money. The job of court personnel is to process cases. They cannot give you legal advice. Once the judge has announced a decision in a case, the Small Claims court procedure is finished. It is up to you to collect what is owed if you win. You may have to seek an attorney's assistance to collect the debt.

If you win the case and receive a judgment, you are the judgment creditor. The loser of the case is the judgment debtor. The clerk of the district court will give the judgment creditor a Judgment Debtor's Statement of Assets form. This form is to be used to help in the collection of the judgment. Petitions to garnish wages or bank accounts or attach other property may be filed.

If there is no appeal or you prevail on appeal and the losing party has not paid the amount owed, the judgment creditor is required to do the following within 15 days:

1. Mail a copy of the Judgment Form or Journal Entry of Judgment and the blank form, Judgment Debtor's Statement of Assets, to the loser (judgment debtor).
2. File proof of mailing with the clerk of the district court.

The judgment debtor has 30 days to either pay the judgment or complete the form, Judgment Debtor's Statement of Assets, and return it to the clerk of the court who will, in turn, send it to you, the judgment creditor.

LEGAL TERMS YOU SHOULD KNOW

Plaintiff - A person who initiates a legal action; a party who complains or sues.

Defendant - A person being sued.

Counterclaim - A legal claim presented by a defendant in opposition to the claim of a plaintiff. Counterclaims avoid duplicate lawsuits over claims by each party against the other. Everything is handled in a single lawsuit using a claim and a counterclaim.

Garnishment - A proceeding whereby property or money is applied to the debt owed by the defendant (judgment debtor) to the plaintiff (garnisher). Garnishments may be against wages or bank accounts.

Summons - An order directing a sheriff or other officer to notify named people that a legal action has been commenced against them and that they are required to appear within a certain time to answer the complaint.

Appeal - A legal proceeding by which a party seeks a higher court review of the action taken by a lower court.

Subpoena - A court order to a witness ordering him or her to appear and testify at a certain time and place.

Service of Process - The presentation of a Summons to the defendant in a legal action or in a Subpoena.

Judgment Creditor - The party who wins a collection suit and to whom money is owed.

Judgment Debtor - The party who loses a collection lawsuit and owes the money.

Lawyer Referral Service

1-800-928-3111

Contact the KBA Lawyer Referral Service for the name and number of a lawyer with experience in a particular area.

Lawyer Advice Line

1-800-928-3111

The Lawyer Advice Line will connect you with an attorney who can offer you immediate legal advice about your legal problem for a fee of \$3.00 per minute billed to your phone bill or credit card.

Kansas Legal Services, Inc.

1-800-723-6953 (application line)

Online applications and free legal forms at: www.kansaslegalservices.org