



Small Claims Court

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Small Claims Court is a simple way for a person or business to take legal action without hiring an attorney. It handles cases under \$10,000 that are less than six years old, including:

- Landlord/tenant disputes;
- NSF/debt collection;
- Auto “fender benders;”
- Contract/payment disputes over goods or services.

Before You Begin

Before beginning an action in Small Claims court, you first should send a letter to the person you want to sue (the defendant), stating that you intend to take the matter to court. You can send the letter via certified mail restricted delivery, return receipt requested OR have the letter served on the defendant by an adult who is not involved in the dispute. The defendant may decide to pay the debt or settle the dispute to avoid a court hearing. If not, you can sue.

Making A Case

You will need the “Claim Affidavit.” This form is part of the packet of papers you can get from the clerk of district court for a nominal fee. Complete the affidavit, making sure to include all the facts about your claim or the debt owed to you. File the completed affidavit and the rest of the forms with the clerk. There is small filing fee. The clerk will return the forms so you can have them served on the defendant.

You cannot serve the forms yourself. They can be given to the defendant by an adult who is not involved in the dispute, or mailed. If you mail them, be sure to send the package by certified mail restricted delivery, return receipt requested. Make sure you include all the pages the defendant needs. Once the forms are served, complete the Affidavit of Service and return it to the clerk as soon as possible.

The Response

After receiving the papers, the defendant may pay the debt immediately to avoid a court hearing. Or, the defendant may:

- File an Answer within 20 days, giving reasons why the debt shouldn’t be paid. If the defendant doesn’t file an Answer, the judge will give you a default judgment—an “automatic” win.
- File a Counterclaim with the Answer. The Counterclaim states why the defendant thinks *you* owe *him* money, and why he shouldn’t have to pay your debt.
- Request a hearing or move the case to District Court. If the case is moved to District Court you may want to hire an attorney to help you. If the defendant loses the case in District Court, the court will make defendant pay some or all of your attorney’s fees.

You can settle the case with the defendant at any time, even if you agree to take less than the full amount. If you settle, be sure to tell the clerk immediately.

The Hearing

The case is decided by a small claims court judge, known as a “judicial referee.” Sometimes, the judge decides the case without a hearing. If there is a hearing scheduled, be sure to show up. If one side doesn’t show up, the judge may dismiss that person’s claim.

The hearing is informal. There is no jury or court reporter. If the defendant has a Counterclaim, the judge will hear both claims before making a decision. The judge will ask questions. You can, too. The judge may ask the person who owes the money (the debtor) how he will pay the debt, and may ask about the debtor’s property.

In some situations, the judge may decide the case should not be decided in Small Claims Court; this may be because the dispute involves complicated legal issues or there are too many disputed facts. The judge will dismiss the small claims case so that it then can be filed as a District Court case. The small claims court filing fee will be refunded.

The Judgment

The judge will make a decision (a “judgment”). This usually happens at the hearing, but sometimes it takes longer and the judgment is sent to you.

A Small Claims judgment is final - it cannot be appealed. The debtor must pay the judgment within 10 days of receiving notice. After the debtor pays the judgment, you will have to fill out the “Satisfaction of Claim” (included in the packet of forms) and return it to the clerk. Sometimes it is very hard to get your money because the debtor is “judgment proof.”

A small claims court judgment is good for 10 years and can be renewed for another 10 years. You may need to use legal collection methods, such as an execution of judgment or garnishment to collect from the debtor. These procedures are set out in state law but because they can be complicated you may wish to contact a private attorney for assistance.

Things to Remember

- File the complaint in the county where the defendant lives or has a business; it will be easier to collect a judgment.
- For the best chance of winning be sure to prepare for the hearing:
 - Make a list of the points you want to cover;
 - Bring witnesses;
 - Have copies of documents, receipts, bills, etc.;
 - Keep a record of the costs you incurred for the Small Claims Court action, including the filing fee and fees for serving the papers on the defendant. If you win the court will add this amount to the total the defendant is ordered to pay.

The Small Claims Court forms are available from the Clerk of District Court or online at: <http://www.ndcourts.com/court/forms/Small/forms.htm>.