

Use of Attorneys at Trial

While attorneys cannot advocate for you in small claims court, if you want your attorney to accompany you to small claims court for your hearing, your attorney may do so. The attorney cannot participate directly on your behalf; however, the judge may allow an attorney to advise you during the hearing. (You will, of course, have to pay your attorney for his/her presence and assistance.)

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. The appeal must be filed in district court, and there are no simplified forms or procedures.

The loser of the small claims case has 14 days after the judgment is entered to file an appeal. The forms for filing a small claims appeal can be found at www.kscourts.org under Court Rules and Forms.

Beware: Additional cost may apply to small claims court appeals. Appeals usually cost money since they involve payment for another filing fee, legal advice from an attorney, and other costs. For a discussion of these added costs, consult an attorney.

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 collection of the 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 lose, and you do not file an appeal, the plaintiff receives a "judgment" that entitles the plaintiff to collect money from the defendant.

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. That 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 14 days – the days the judge is entered.

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; the 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. In small claims court a counterclaim must arise out of the same transaction or occurrence as the plaintiffs' claim. 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.

Judgment – The official decision of a court determining the rights of the parties involved.

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

Subpoena – A court order to a witness ordering him/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 who owes the money.

This pamphlet is based on Kansas law and is published to provide general public information, not specific legal advice. The facts involved in a specific case determine the application of the law.

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. That lawyer will provide you an initial consultation for 30 minutes for no more than \$15.

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 per minute, billed to your phone bill or credit card.

Pamphlets

As a public service of the KBA and the lawyers in your community, the following pamphlets are available in limited quantities through the KBA office, 1200 SW Harrison, Topeka, KS 66612-1806; (785) 234-5696.

Aging and the Law • The Automobile Accident • Child Custody, Support, & Visitation Rights • A Death in the Family... What Should I do? • Domestic Violence – A Practical Guide for Victims • Violencia Domestica – Guia Practica para las Victimas • Divorce – an IRS Perspective • Introducing Your Lawyer • Is a Living Trust for You? • Joint Tenancy • Juror: Your Rights and Duties • Living Wills and the Durable Power of Attorney for Health Care Decisions • Marriage & Divorce • Small Claims Court • Stop, Look, and Check Before Buying a Home • Ways to Settle Your Dispute • What Is Probate? • What's So Important About a Will?



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- How do I use it?

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What is Small Claims Court?

Kansas small claims court was established in 1973 to provide a simple, informal procedure for people who want to have smaller legal problems adjudicated cheaply and quickly. Americans have always had the right to represent themselves in a courtroom. Generally, in small claims court, the parties represent themselves on small legal matters without attorneys.

The purpose of this brochure is to acquaint you with how small claims court works and help you decide whether small claims court is where you want to solve your problem. Please remember that procedures vary from county to county. Always check with the district court clerk's office where you live to be sure you have all of the correct information before acting.

The Basics

Small claims court is only for simple cases to recover money or property worth \$4,000 or less. If you seek more than \$4,000, the claim is no longer "simple" and you should consult an attorney.

No Lawyer, No Jury

In most instances, you cannot be represented by a lawyer in small claims court. You can ask a lawyer for legal advice on the strengths and weaknesses of your claim. This is done out of court before the court hearing. The lawyer is not allowed to represent you during the trial. You cannot have a jury 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 \$4,000, you may wish to consult an attorney regarding other forms of legal action. An attorney can tell you what these other actions will cost and help you decide what is the best course of action for you.

Corporate Involvement

The Small Claims Act allows certain business entities to use certain nonlawyer 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:

- ✓ Limits on size of suits. Claims cannot be greater than \$4,000, exclusive of interest, costs, and any damages for worthless checks that may be awarded.
- ✓ Limits on number of actions. No individual or business can file more than 20 cases in small claims court in one calendar year.
- ✓ Cost of filing. The court clerk's office in your county can tell you the amounts of the filing fees and fees for service of process.
- ✓ Information needed to file. To file a case, you must pay the filing fee and fill out a form (called 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 (or notice to appear) in court. 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? You may sue any person or business operating in Kansas that you believe owes you money or property. You may not sue the state, a county, city or township entity, or any other government in small claims court.

How do I File a Claim?

You can file your claim by going to the small claims division of the clerk of your district court. You should also know the exact amount you want to recover and be prepared to give a written explanation of your case. You can get a petition online at www.kscourts.org. You may then fill out the petition at the clerk's office and file it or you may take it home to complete and file later. The petition must be notarized or signed in front of the clerk of the court.

After the Claim is Filed

Once you have filed your claim, you will be notified of a hearing date. Then, a summons, along with a copy of your petition, will be served by the sheriff's department on the person being sued.

If the defendant in your case cannot be served, 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 that the person or people 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 process 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 Forms 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 settle the claim with the other party, be sure the court is notified in writing of a settlement.

If you do not settle the claim, then you must appear in court at the time scheduled; otherwise the court 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 to pay.

Detailed information about the small claims procedure appears on the printed forms you must use to file your case. If you decide to use the small claims procedure, you may obtain forms from the clerk of the district court small claims division or print them from www.kscourts.org under Court Rules and Forms.

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, papers, 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, do this several weeks before the trial date. A witness 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 on another date.
- ✓ Default judgment. If either party was properly served and does not show up for the hearing, the judge may declare the absent party in default and award judgment to the other party.

Civility & Manners

Forget what you see on television about how courtrooms operate. Kansas small claims courts are not televised. Being rude to another person, being argumentative, or being belligerent may make for good television, but it will not help your case in small claims 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 story respectfully, truthfully, concisely, and politely.

Defenses in Small Claims Court

In 1994, the legislature created new defenses in small claims court. Some of those defenses are absolute bars to a plaintiff's proceeding in small claims court. You should consult an attorney about those defenses. Briefly, the defenses include, but are not limited to:

- whether the number of suits filed exceeds the statutory maximum,
- whether the representative of the other party is an attorney or former attorney in Kansas or elsewhere,
- whether the amount in controversy was assigned from the real creditor to the plaintiff, and
- whether the suit is filed in the county where you reside.