

SMALL CLAIMS INFORMATION FOR THE CITY COURT OF PORT ALLEN

WHAT IS SMALL CLAIMS COURT?

The Small Claims Division is part of the City Court of Port Allen that was established by the State of Louisiana. You may sue to resolve minor civil disputes or try to recover claim of up to \$5,000.00, plus interest, court cost and attorney fees. A claim, generally speaking, asserts a legal right you may have.

WHO MAY FILE SUIT IN SMALL CLAIMS COURT?

You must be EIGHTEEN (18) YEARS OF AGE to file a case in Small Claims Court, but minors may sue through a parent or guardian. The person filing the suit is the 'Plaintiff'.

An officer or employee of a corporation or unincorporated association may file suit on behalf of an organization if the amount in controversy does not exceed \$5,000.00 and involves an open account or negotiable instrument (La RS. 37:212C); otherwise a corporation must be represented in court by a licensed attorney.

Plaintiff's access to the Small Claims Court is limited to two (2) filings per party per calendar month.

WHO MAY BE SUED IN SMALL CLAIMS COURT?

The person or company being sued may be an individual, a sole proprietor, a partnership, a corporation or an unincorporated association such as a club or association. The person being sued is called the 'Defendant'. In some cases there may be more than one defendant. It is important that you properly identify and sue the person or company.

If the defendant is an individual, his residence should be within Ward III of West Baton Rouge. Ward III is the area bounded on the South by Emily Drive, on the North by Lafiton Lane, East by the Mississippi River and West by the Iberville Parish line.

If a business is being sued, call the LA Secretary of State's Corporation Division at (225)925-4704 to find out if the business is incorporated or if it's using a "trade name" (not incorporated).

If the business is incorporated, you will be given the name and address of the REGISTRATION AGENT for the corporation. That is the PARTY (PERSON) who will receive notice of the suit.

If the business is not incorporated, you must find the NAME OF THE OWNER of the business, not the name of the business itself.

WHAT KINDS OF SUIT MAY BE FILED IN THE SMALL CLAIMS COURT?

You may sue when you believe someone owes you money. For example, you may sue if :

- Someone fails to return a deposit to you.
- Goods and/or merchandise that you purchased are defective and the seller refuses to repair, refund or replace.
- You have a loss due to an accident.
- Your property is damaged or destroyed by someone performing a service for you.
- Action for possession of personal property, excluding real estate.

The following types of cases **MAY NOT** be instituted in the Small Claims Court:

- Suits involving annulment, separation, divorce, alimony, separation of property.
- Successions, interdiction, receivership liquidation, habeas corpus, or the title to real estate.
- Suits against a state agency, parish, municipality or other political subdivision.
- Suits against a public official performing official duties.

FILING YOUR CLAIM:

The Clerk will give you a form entitled "Statement of Claim and Citation". Be prepared to provide the following information:

- Your name, address, and telephone number where you can be reached at during the day.
- The correct name and address of the person you are suing. If it is a corporation, you will need the proper name and address and the registered agent's name and address.
- A simple, but COMPLETE statement of why you are suing. This should include:
 - Dates and locations as they relate to your claim and the amount of money you are trying to recover.

It is important that you bring a copy of any written evidence that may be helpful in proving your claim in Court, such as:

- Contracts
- Leases
- Receipts
- Paid Bills
- any document or evidence you feel is important

Remember: The limit is \$5,000.00, not including interest, court costs and attorney's fees.

If you receive a judgment in your favor, you can claim interest on the sum of money owed, running from the date you originally filed suit until the money is actually paid. This is known as "Judicial Interest" and the rate is fixed by law.

WHAT HAPPENS AFTER YOU FILE SUIT?

The Clerk's Office will forward the defendant's copy of your Statement of Claim and Citation, which includes an "Information Sheet" and an "Defendant's Answer sheet" by either serving through the City Marshal's Office (if within venue) or by certified mail to the defendant.

The Court will send you a notice informing you when/how the defendant was served. From the date of service/returned certified mail, the defendant has TEN DAYS (10) (calendar days) to file an answer.

DISAGREE WITH THE ANSWER FILED:

- If an answer is filed, the Court will mail you a copy of the answer. If you, the Plaintiff, disagrees with the answer, YOU MUST call the City Court and request a trial date.

AGREE WITH THE ANSWER FILED:

- If the defendant answers the suit agreeing to the amount being sued for, then you can request a court date to appear before the Judge to present your evidence for confirmation of a default judgment.

NO ANSWER FILED AFTER THE TEN (10) DAYS:

- You may call the office to verify that no answer has been filed, and at the time, request a court date to get a judgment against defendant. And a notice will be sent to both parties.
- If the defendant is served by Certified Mail, and it's returned as UNCLAIMED, that is the same as being served. Therefore, after the affixed time, you may request a court hearing to get a judgment.

INVALID ADDRESS:

- If the citation through certified mail is returned as UNABLE TO FORWARD, a new address will be needed for service.

It is the defendant's right to request that the action be transferred from Small Claims Division to the regular civil docket. A written motion requesting this transfer must be filed with the Clerk's Office within the same (10) calendar days allowed for the defendant's answer to be filed and a check for the fee of filing. Transferring the case to the regular civil docket preserves both parties' rights to appeal and unfavorable judgment of the Court. An appeal would permit a review of the Trial Judge's ruling by a higher court to determine whether the Judge properly applied the law to the facts of the case. Transfer to the regular civil trial division also means that there will be no relaxation of the legal rules of evidence. In such cases, you should be alerted to the advisability of hiring an attorney.

HOW DO I PREPARE FOR COURT?

You as the Plaintiff, have the burden of proving your case before the judge at trial by a preponderance of the evidence. This is a balancing test by which the Judge weights the probabilities of accuracy of each party's respective claim. The following may be helpful in preparing for your trial:

1. Gather all the evidence that is related to your claim or your defense if you are suing or being sued. This includes: Contracts, Receipts, Promissary Notes, Letters, Canceled Checks, Written Agreements, or other written material. **BRING THIS EVIDENCE TO COURT WITH YOU.**
2. Ask for **WITNESSES**: these are people who saw what happened or have knowledge which might help your case; have them arrive in Court on the Trial Date. If a witness will not agree voluntarily, you may ask the Clerk to **SUBPOENA** him/her. There is a fee for each subpoena issued. If a witness is not subpoenaed and does not appear at the hearing, his absence will not ordinarily constitute good ground for a postponement or a continuance in your case. Your case may still be heard even if your "unsubpoenaed" witness fails to appear.
3. Go over the facts and organize them in your mind. You may want to write down the most important facts to bring out, since you will need to give a clear statement of the facts in court. If a settlement is reached prior to trial, notify the Clerk's Office in writing **IMMEDIATELY**, so that the case can be dismissed from the docket. If time does not permit a letter, telephone the Clerk's office at once. If you find you are unable to attend Court at the date and time set, you **MUST IMMEDIATELY NOTIFY THE COURT IN WRITING** to seek a continuance. Continuance requests that do not reflect the consent of the opposing party are not automatically granted and must be supported by good cause.

WHAT IF SOMEONE SUES ME?

If you have been served with a Citation, you are referred to as the "Defendant" in this matter. Most importantly, **DO NOT IGNORE** the Statement of Claim and Citation and Attention Sheet. You must decide whether you wish to transfer the case to the regular civil docket. This will enable you to be aware that appeal process can be lengthy and costly and may require that you hire an attorney.

If you decide to contest the case you **MUST** file your answer in **WRITING** with the Clerk's Office within the ten (10) day period allowed. **IF YOU DO NOT DO SO A JUDGMENT WILL BE ENTERED AGAINST YOU.** This means that you will lose without a chance to tell your side of the story. Your answer should be truthful and contain every defense you intend to raise.

Possible defenses include:

- No jurisdiction or improper "venue"
- Contributory negligence (negligence on the part of the plaintiff)
- Discharge in Bankruptcy
- Error or mistake
- Fraud or illness on Plaintiff's part
- Previous compromise or payment of an obligation

If you think you have a claim of your own against the party suing you, you may include it in your answer. The Plaintiff must be served with this "Counterclaim" or Reconventional Demand: before the trial.

WHAT HAPPENS AT TRIAL?

1. Arrive early and bring all court papers with you. If you are the party suing and arrive late, or do not appear at all, your case may be **DISMISSED**. If you are the party being sued and arrive late, or do not appear at all, a judgment may and can be entered against you. In other words, **YOU MAY LOSE WITHOUT A HEARING IF YOU ARE LATE.**
2. If you are **SUING** and the other party is not there, you must still show proof of your claim before you can get a judgment in your favor. If you are **BEING SUED** and the other party is not there, ask that the case against you be dismissed (so you will win the case).
3. If you are suing, you will have first chance to present evidence and explain why you are suing.

You have the responsibility of proving the amount of money claimed I owed to you by the defendant. This is where you call your witnesses or testify yourself to prove your case. If you are the one being sued, you will have the opportunity to ask questions of your opponent and/or any witnesses he/she may call to testify (cross-examination).

WHAT HAPPENS AT TRIAL (CON'T):

THE PURPOSE OF YOUR QUESTIONS SHOULD BE TO SHOW THAT YOUR OPPONENT'S CASE DOES NOT "HOLD WATER". This is not the time for you to make statements or argue with the witness or opponent. After they have put on their evidence, you will have a chance to tell your side, have your witnesses, testify, and present evidence. The Plaintiff then has the opportunity to ask you and/or your witnesses questions. After all the testimony is taken, the Judge will announce the decision as to which party has won the case and the amount of the judgment, if an amount of money is awarded. There are times when a judge will not render a decision immediately after the trial but rather take the matter "under advisement". You will be notified of a decision by mail.

A judgment rendered in Small Claims Division becomes final and executory three days after it is signed, or served on the defendant when service is necessary, unless withing that period of time a Motion for a new Trial is filed by the defendant. A judgment merely established that the defendant owes you money. IT DOES NOT NECESSARILY MEAN YOU WILL BE PAID.

IF I WIN, HOW DO I COLLECT MY MONEY?

1. Ask the Judge to order the ENTIRE amount you have won to be paid in a single payment.
2. It is not the duty or the function of the Court to pay or collect what is owed to you. IT IS YOUR RESPONSIBILITY TO TAKE ANY AND ALL LEGAL ACTION NECESSARY TO COLLECT ON YOUR JUDGMENT.
3. In order to collect, you may have to take further action; such as a garnishment of the losing party's bank account or garnish his /her wages or "seize" and sell certain non exempt property that belongs to the defendant. There is a Court fee for these actions.
4. If you do not know of any assets of the losing party, you may request a "Judgment Debtor Rule" for an ORAL EXAMINATION as to the whereabouts of his/her assets. There is a fee for filing this action and it is not a new trial or hearing. You will be allowed or orally examine the defendant in regard to assets, employment, etc. at a place suitable for such examination. This information may help you in finding other legal means for collecting of your judgment.

MAY I DO ANYTHING IF I LOSE?

1. REMEMBER YOU MAY LOSE A CASE BY DEFAULT SIMPLY BECAUSE you are not present ON THE Hearing date. If you are notified that you have been dismissed, YOU MAY STILL HAVE A WAY OUT.

Consider the following:

Did you file and "Answer"?

Were you notified of the Hearing date?

If not, you will need to file a MOTION TO VACATE the Default Judgment or a MOTION TO REINSTATE the case if it is dismissed. A hearing date will be set to hear your argument as to why the decision should be set aside. Bring all your evidence and/or witnesses to support your motion to the hearing date to present to the Judge. If your motion is granted by the Court, the case is reopened and you will have an opportunity to have a trial before the Judge.

2. If you lose your case in a Small Claims hearing, YOU MAY TRY TO GET A NEW TRIAL. Time delays are important on this motion and you should remember the following:

You must file a written Motion for New Trial within three (3) days after the Judgment is signed, or three (3) days after it is served on the losing party. The three days excludes weekends and holidays.

CHECKLIST:

PLAINTIFF

1. Does the claim fall within jurisdiction of Small Claims Division?
2. Are you suing the true defendant?
3. Do you have the proper legal name and address?
4. Did you fill out a complete statement of why you are suing? Include amount of money you seek to recover, date and locations related to your claim.
5. Include copies of written evidence.
6. Need your complete name, address, phone number and signature.

DEFENDANT:

1. Do you wish to contact an attorney?
2. Do you wish to transfer the case to the regular docket? Must file request within ten (10) days.
3. Do you wish to contest the claim? Must file a written answer within the ten (10) days. In your answer consider:
 - Is this the proper court?
 - Has debt been discharged in bankruptcy?
 - Was there negligence on part of the Plaintiff?
 - Has there been a compromise or payment?
4. Do you wish to Counterclaim against the Plaintiff?

GLOSSARY

PLAINTIFF:

The party or person who is suing or filling suit against another party or person.

DEFENDANT:

The party or person who is being sued or having suit brought against.

SERVICE:

When a copy of the suit or Statement of Claim and Citation is served or presented to a party by a duly authorized agency, thereby putting that party on notice of the action.

VENUE:

The place or parish in which alleged events from which legal actions rises; take place; a statement showing that a case is brought to the proper court of authority.

INCORPORATED:

Formed into a legal corporation under applicable state law.

AGENT:

a person or party acting legally on behalf of another person, party or corporation.

SUIT NUMBER:

The number assigned to your suit, or petition at the time of filing.

GARNISHEE:

Defendant's employer or someone who has money or property in his possession belonging to defendant, or a bank where defendant has funds.