

## **ALABAMA'S SMALL CLAIMS COURT QUESTIONS and ANSWERS**

### **A MESSAGE FROM THE CHIEF JUSTICE OF THE SUPREME COURT OF ALABAMA**

Small Claims Court is a division of the district court designed to deal with every day legal problems—the sort of disputes that everyone may have at some point in their life. It handles conflicts involving individuals and sometimes businesses where money amounts up to \$3,000 are in controversy

This brochure, developed by the Administrative Office of Courts, explains how Small Claims Court works. Please read the pamphlet to gain a better understanding about what to expect from filing in Small Claims Court. If you need legal assistance, please contact an attorney.

### **WHAT IS SMALL CLAIMS COURT?**

The Small Claims Court is a special civil division of the District Court where individuals as well as businesses can settle disputes and disagreements. The maximum amount you may sue or be sued for is **\$3,000**. Procedures are simple, informal, and inexpensive. There are no juries and you may appear before the judge with or without an attorney.

### **SHOULD YOU FILE A SMALL CLAIMS CASE?**

Before you file a claim, you should contact the person or business you plan to sue and attempt to settle your dispute out of court. This effort may save you both time and money.

You should also find out if the person or business you plan to sue has any money or assets to pay your claim, if you should win. Otherwise, you may have a difficult time collecting on a court judgment. Remember, it is up to you—not the court—to take further legal action against the person or business if they do not pay the judgment.

### **WHO CAN USE THE SMALL CLAIMS COURT?**

An individual who has reached the age of 19, a partnership, or a corporation may file a claim, with or without an attorney. If a partnership files without an attorney, the person representing the partnership must be a partner or employee of the partnership. If a corporation files without an attorney, the person representing the corporation must be an officer or full-time employee of the corporation.

### **HOW DO YOU FILE A SMALL CLAIMS CASE?**

You or your attorney should go to the Small Claims Division of the District Court in the county where the person or business you wish to sue lives or has an office and file a **Statement of Claim (Complaint)** form. The clerk has this form.

Having filed a complaint, you then become the "plaintiff" in the case and the person you are suing is the "defendant." You must furnish the court the correct and complete address of the defendant.

The clerk will assign your case a number and you should use this number whenever you contact the court concerning your case.

You must pay a filing fee at the time the claim is filed. If you cannot afford to prepay this fee, you can fill out an Affidavit of Substantial Hardship form and ask the judge to delay payment. You may obtain this form from the court clerk

The court clerk cannot give you legal advice

### **WHAT HAPPENS AFTER THE CLAIM IS FILED?**

The clerk will send a copy of the Statement of Claim (Complaint) and a **Defendant's Answer** form to the person or business you have named as the defendant.

Once served with a Statement of Claim (Complaint), the defendant has 14 days to complete the Answer form and to file the Answer with the Clerk of the Small Claims Court.

If the defendant fails to file an Answer within 14 days after being served, you may ask the clerk of the court to enter a Default Judgment against the defendant.

### **IF YOU ARE THE DEFENDANT, WHAT SHOULD YOU DO AFTER A CLAIM HAS BEEN FILED?**

You may choose to settle with the plaintiff before the date the claim is set for trial. If you do settle, then the claim may be dismissed, with no judgment entered against you. If you choose not to settle or you are unable to settle, you must answer the Complaint within 14 days after being served, admitting or denying all or part of the claim. Remember, your answer must be filed within 14 days or a default judgment may be entered against you. As the defendant, you may also choose to file a **Counterclaim**, which is a claim that you have against the plaintiff.

All parties to a small claims case are encouraged to try and reach a settlement agreement prior to trial.

All settlement agreements should be in writing and should state who is to pay the court costs. If the defendant does not agree to pay the court costs as part of the settlement, the plaintiff will be responsible.

If a settlement agreement is reached before the trial, the plaintiff must immediately notify the clerk so that the trial can be cancelled.

### **WHAT SHOULD BOTH SIDES DO TO PREPARE FOR THE TRIAL?**

If an agreement cannot be reached, both the plaintiff and defendant should get together all papers, receipts, bills, sales tickets, estimates, photographs, etc., having anything to do with the claim.

You should write down the details and facts of the case to assist you in telling your side of the story at the trial.

As the plaintiff or defendant, you may bring any witnesses you feel can help explain your case. If there is any reason to believe a witness will not voluntarily appear, you may ask the clerk to issue a **witness subpoena** requiring that person to appear. You will be required to pay a witness subpoena fee

If you do not feel confident and prepared to present your case yourself (plaintiff) or to defend

your case yourself (defendant), you should contact an attorney. Both sides have a right to have an attorney present to represent them.

### **WHAT HAPPENS AT THE TRIAL?**

*BE ON TIME.* If you are late, the judge may dismiss your case (if you are the plaintiff) or he may enter a default judgment against you (if you are the defendant). If something comes up which would prevent you from being on time or appearing at the trial, you *MUST* inform the clerk as soon as possible and request a continuance (delay) of the trial.

A trial in Small Claims Court is an informal hearing before the judge. There is no jury. When the case is called, the plaintiff will present his/her evidence and his/her witnesses. The defendant will then present his evidence, and call his witnesses.

After hearing both sides of the case and looking at the evidence, the judge will make a decision and render a judgment based on the law and the facts presented.

### **WHAT CAN YOU DO IF YOU DISAGREE WITH THE COURTS JUDGMENT?**

If either of you (plaintiff or defendant) disagrees with the decision, you may appeal the case by filing a **Notice of Appeal** form with the clerk of the Small Claims, Court within 14 days after the date of the judgment. The clerk has this form

The appeal will be heard in the Circuit Court. The party filing the appeal must be prepared to pay a filing fee and post a bond to cover any unpaid court costs. You may need the assistance of an attorney if you choose to appeal because the simplified procedures of Small Claims Court do not apply in Circuit Court.

### **IF YOU, THE PLAINTIFF, WIN, HOW DO YOU COLLECT THE JUDGMENT?**

If the defendant does not pay the judgment (after the appeal time has run--14 days) it is up to you and not the court to take one of the following actions:

- Execution—Obtain a court order authorizing the sheriff to pick up any property belonging to the defendant and sell it to satisfy the judgment; or
- Garnishment—Obtain a court order to garnish (withhold) the wages of the defendant to satisfy the judgment.

Both of the above described actions require an additional filing fee. The clerk has the necessary forms. Because either method of collection may become involved, you may wish to have an attorney explain the procedure and assist you in filing the appropriate forms. The court clerk cannot give you legal advice.

### **IF YOU, THE DEFENDANT, LOSE THE CASE AND THE PLAINTIFF FILES AN EXECUTION OR GARNISHMENT PROCEEDING AGAINST YOU, WHAT SHOULD YOU DO?**

If you do not understand the proceeding, you should contact an attorney for assistance. You have certain legal rights and an attorney can explain these rights to you. The court clerk cannot give you legal advice.

## **DEFINITIONS**

**Plaintiff:** The person who files a claim against another person.

**Defendant:** The person against whom a claim is filed.

**Statement of Claim (Complaint):** The legal paper filed by the plaintiff briefly describing the claim against the defendant.

**Defendant's Answer:** The legal paper filed by the defendant admitting or denying all or part of the claim against him/her.

**Defendant's Counterclaim:** The legal paper filed by the defendant telling the Court and Plaintiff about a claim (s)he has against the plaintiff.

**Judgment:** A final determination by a court of the rights and claims of the parties in an action.

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