Small Claims Court

A Guide to Using Iowa Small Claims Court Forms

Iowa Legal Aid
iowalegalaid.org

IMPORTANT NOTICE: READ THIS INFORMATION BEFORE USING ANY PART OF THIS PUBLICATION

This booklet is a general summary of the law. It is not meant to completely explain the subjects in this booklet. IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

The information in this booklet was correct as of the date it was printed (see the back cover). The laws may have changed. DO NOT ASSUME THAT THE INFORMATION IN THIS BOOKLET IS NOW CORRECT.

You should see a lawyer to get complete, correct, and up-to-date legal advice. Do not rely on the general information in this booklet for your specific case.

If you need a lawyer but can't afford one, contact Iowa Legal Aid. You may be able to get free legal help. Call or write Iowa Legal Aid. The address and phone numbers are on the back cover.

AS YOU READ THIS BOOKLET, REMEMBER IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE

HOW TO USE THIS BOOKLET

This booklet is meant to help people know how Small Claims Court works. The booklet has two main parts. ***First***, some important questions about Small Claims Court and its procedures are asked and answered. ***Second***, a "glossary" gives the meanings of many of the special words and phrases used to describe how Small Claims Court works.

You can get more details about Small Claims Court from:

- The ***Code of Iowa***, especially Chapter 631. Public libraries and Courthouses usually have a copy of the ***Code of Iowa***. Since laws are changed from time to time, make sure that the part you are interested in is up-to-date. (Librarians can help.) On the Internet, you can get updated ***Code of Iowa*** information on the Iowa Legislature's website: www.legis.state.ia.us/Iowalaw.html.
- ***Lawyers***. Free legal help for qualifying low-income people may be available through Iowa Legal Aid. Ten regional offices serve all counties of the state. Call or write to Iowa Legal Aid. The telephone number and address of the Central Administrative Office are on the back cover.
- ***The Clerk of Court*** at your local Courthouse. The Clerk has printed copies of most forms.
- ***Online Small Claims Court Forms***: You can get forms you need from the Iowa Judicial Branch website. The online forms are "fillable." This means you can type in the information for your case and then print documents to use in Court.

  - **For Information on Small Claims Court in Iowa and links to forms needed to start or defend a small claims case, go to:**

    http://www.iowacourts.gov/Representing_Yourself/Civil_Law/Small_Claims/

  - **For the current set of Small Claims Court forms, go to:**

    http://www.iowacourts.gov/Representing_Yourself/Civil_Law/Small_Claims/Small_Claims_Forms/

    If the county where you file uses EDMS (Electronic Document System), you must use a different set of small claims forms , found at:
    www.iowacourts.gov/Online_Court_Services/EDMS/

  - **For instructions on representing yourself in Small Claims ("Instructions for Pro Se Users"), go to:**

    http://www.iowacourts.gov/Representing_Yourself/Civil_Law/Small_Claims/Instructions_for_Pro_Se_Users/

If you find this booklet hard to understand, you should get someone to help you with your small claims case.

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What is Small Claims Court?

Small Claims Court is a special Court created to settle disputes people have over getting property back and "small" amounts of money, that is, $5,000 or less. Landlords trying to remove tenants from property may also use Small Claims Court through an "action for forcible entry and detainer," or more commonly, an "eviction."

A Judge or Magistrate will listen to your case and make a decision based upon the facts and law. The person who brings the case or counterclaim has to prove the case by a "preponderance of the evidence." A preponderance of the evidence is a legal term which generally means the version of events or parties' stories which is more convincing.

This booklet is mainly on disputes over money. The Iowa Legal Aid booklet *A Guide to Landlord Tenant Law in Iowa* has information on evictions.

Who can use Small Claims Court?

Any person, association, or corporation can sue or be sued in Small Claims Court, as long as the amount at stake is $5,000 or less. The "Plaintiff" is the person who sues someone else. The "Defendant" is the one who is sued. In a single Small Claims suit, there may be more than one Plaintiff, and more than one Defendant. For example, suppose three people rented a house together. They moved out, but didn't get their rental deposit back. All three might be Plaintiffs in a suit against a married couple who were the landlords.

When a plaintiff or a Defendant is a business, a corporation or a partnership, the Small Claims forms should show that fact. For example, the Original Notice Form 3.1 may list the Defendant in any of the ways listed below, depending on the circumstances.

"Paul Johnson"

"Paul Johnson, doing business as Johnson's Repair Shop"

"Johnson's Repair Shop, a partnership"

You may not know for sure how to name a certain person or business. To find out about if they are a partnership or a corporation, contact the Iowa Secretary of State (Corporation Division) in Des Moines and the local county recorder.

The telephone number for the Secretary of State is (515) 281-5204 and the website is http://sos.iowa.gov/

Do you have to have a lawyer?

Although it is okay for a person to have a lawyer in Small Claims Court, it is ***not required***. The design of Small Claims Court is to have simple, informal procedures. The idea is for people to settle disputes themselves, without having to get lawyers.

Would I be better off if I had a lawyer?

It is often very helpful to have the advice of a lawyer, if you can get it. If your case is complex, or involves a lot of money, perhaps around $1000 or more, you may want to talk to a lawyer.

One example of a complex case is a typical consumer lawsuit. Suppose a bank, loan company, or retail seller is suing a borrower or buyer who fell behind in installment payments. A lawyer might find valid defenses to these suits, based on the contract terms or the collection methods. These defenses could let the borrower or buyer reduce or eliminate the amount owed. Such defenses are often quite hard to recognize. By checking with a lawyer, the person being sued can make sure valuable defenses are raised in Court.

Even in less complex cases, it is often helpful to talk to a lawyer before going to Small Claims Court. He or she can help make sure you are suing the right person (or the right ***people***). You can also get some tips on how to gather evidence and present the case.

You may be able to get free legal help from Iowa Legal Aid. (See the address, phone number and website address on the back cover.) If not, you may be able to get a private lawyer to help you. If you are poor, a private lawyer may help you free or at a low cost, since lawyers have a professional duty to help poor people get the legal help they need.

Sometimes ***your*** lawyer can be paid a fee by the other side in the dispute. This is because some laws allow the Judge to make the losing side pay the reasonable attorney's fees of the winning side. For example, many disputes based on landlord-tenant law or consumer credit law allow for such attorney's fee pay payment by the losing side. So you may want to check the law, or talk to a lawyer, to see whether the law which applies to your situation allows for attorney's fees.

REMEMBER: While a lawyer may be helpful, it is ***not necessary*** to have one. This booklet can help you learn about Small Claims procedures. Then you can handle your case yourself, if that is your choice.

What types of cases end up in Small Claims Court?

Small Claims Court can decide just about any argument or dispute which can be solved by one person paying some money to someone else. For example, maybe your employer owes you money. Perhaps someone damaged your property somehow. Possibly your landlord improperly refused to give your deposit back. Even if it is hard to put the dispute into exact dollars and cents, Small Claims Court may still be the place to go. For example:

- A debt collector may be improperly harassing you about paying up, or
- Your landlord might have been walking into your home without permission, or
- Someone strikes you without justification.

In these examples, it would be proper to sue in Small Claims Court. You could ask for some money (no more than $5,000) you think is due to you for the wrong that was done.

NOTE that interest can be added to the amount of money ($5,000 maximum) in dispute in Small Claims Court. For example, say a loan agreement allows interest to start building up as soon as the borrower falls behind in payments. The borrower pays the loan down from the original loan amount of $6,500 to $5,000, but then stops paying. Interest on the $5,000 would start adding up under the agreement as soon as the borrower falls behind. Then, if the lender finally sues the borrower a few years later, the claim might be for the $5,000 left unpaid, ***plus*** $500 interest, for a total of $5,500. The interest is not considered in deciding whether the claim is proper for Small Claims Court. This means the lender may sue for the full $5,500 in Small Claims Court.

When one party ~~only~~ wants to get an item of PROPERTY, as opposed to money, a different type of legal proceeding is allowed in Small Claims Court. The type of case is called a Replevin. Under this part of the law, a plaintiff may bring a lawsuit asking the Court to order a Defendant to return property in his or her possession back to the plaintiff.

A Replevin lawsuit can only be used in Small Claims Court when the value of the property is under $5,000. Most of the time, a Replevin lawsuit is brought when a person feels that suing for money is not appropriate. Suppose the Defendant took family pictures without a real money value, but of value to the plaintiff. Then a Replevin lawsuit may be more appropriate than suing for money. Another example could be if the Defendant is holding on to an automobile to which he is not entitled. Suppose the Defendant is either collection-proof (see page 12) or having the car returned would help the plaintiff more than receiving money judgment. Then a Replevin lawsuit may be proper. You can use Form 3.5 to file a Replevin lawsuit. You can get the form at your local Clerk of Court or online at:

http://www.iowacourts.gov/Representing_Yourself/Civil_Law/Small_Claims/Small_Claims_Forms/

If the county where you file uses EDMS (Electronic Document System), see the first page of this booklet for where to get forms you must use.

Certain disputes cannot be heard in Small Claims Court. The following is a list of examples of legal cases which *cannot* be decided in Small Claims Court:

- Family matters, such as divorce, custody, child support, or adoptions.
- Guardianships or conservatorships.
- Injunctions, that is, Court Orders to keep someone from doing something in particular, like bothering or hurting you.
- Controversies with more than $5,000 at stake.

For cases like these, you should see a lawyer.

Where do I go to file a Small Claim?

There is a Small Claims Court in every county in Iowa. Most are located in the County Courthouse. But sometimes it may not be clear ***which*** county's Small Claims Court to use; for instance, if you live in Polk County, the person you want to sue lives in Linn County, and you're suing for damages from a car accident that took place in Black Hawk County. In such cases, you may ***usually*** bring suit in the County where the ***Defendant*** lives (or does business, if you're suing a business or corporation). If there is more than one Defendant, you may sue in any county in which at least one of them lives.

Even if a Plaintiff files a Small Claim in the wrong Iowa county, the case can remain there to the end unless the Defendant objects, early in the proceedings. Under certain consumer laws if a debt collector brings suit in the wrong county they may be violating state and federal law.

How do I file a Small Claim?

To sue someone in Small Claims Court, begin by going to the Clerk of Court's office. The Clerk will provide you with the necessary form, and will answer your questions about the Small Claims process. You can also get the forms online at http://www.iowacourts.gov/Representing_Yourself/Civil_Law/Small_Claims/Small_Claims_Forms/

If the county where you file uses EDMS (Electronic Document System), see the first page of this booklet for where to get forms you must use.

There are many different Original Notice and Petitions for different situations. One of the most common is the Original Notice and Petition for a Money Judgment, Form 3.1, which a Plaintiff fills in and returns to the Clerk of Court to be filed.

The Clerk will require you to pay a filing fee in the amount of around $85.00. You will probably also have to pay a small fee to cover the costs of serving the Defendant(s) with the Original Notice. If you later win your suit, the Judge will probably order the losing party to pay you back such Court costs.

You should also ask for the form "Verification of Account and Affidavit of Nonmilitary Services," Form 3.27, and fill it out.

When the necessary costs have been collected from you, the Clerk will arrange for a copy of the Original Notice to be served upon each Defendant. The Notice may be served either by certified mail or by in-hand delivery, whichever you choose. It is always cheaper to have the papers served by certified mail rather than having the sheriff serve them. A person who is served Notice should file an Answer, Form 3.11 (see page 4). For Iowa residents, the deadline for Answer will be 20 days from when the Defendant was served.

Special procedures for serving papers apply if you are suing someone who lives outside of Iowa in Iowa's Small Claims Court, based on that person's contact with you in Iowa. In such cases, talk to a lawyer or the Clerk of Court.

What if I can't afford to pay the filing fee?

You may not be able to afford to pay the filing fee and costs to deliver the Original Notice to the Defendant(s). It is possible to get special permission from the Court to file your claim and serve the papers without payment.

As a rough guide, a person should ask to defer fees if the money used to pay the filing fee and service costs is needed for necessities. Examples would be if the money has to come directly out of the money needed for necessary household expenses, such as rent, utilities and food. A person in this financial position should not have to choose between having his or her day in Court, on the one hand, and going without necessities, on the other hand. A sample Application and Affidavit to Defer Payment of Costs is found at pages 17 and 18.

How do I go about getting permission to proceed without paying the fees and costs?

A Judge's permission is required before the Clerk will file papers without advance payment. A written request like the form on pages 17 and 18 can be used to get the Judge's permission. Note that a complete summary of your financial situation should be included as part of your request.

Once your Application and Affidavit to Defer Payment of Costs is ready, take it to the Clerk of Court along with your completed Original Notice. At that point, the Clerk can either arrange to have your written request considered by a Judge, or arrange for you to take it before a Judge yourself. The Judge may not ***have*** to grant your request, even if you are quite poor, but such requests are often granted. If your money situation is really tight, it's worth a try.

In filling out your Application and Affidavit to Defer Payment of Costs, you do need to include a short statement of the nature of your lawsuit. This is to let the Judge know ***briefly*** why you are filing an action in Small Claim Court. In describing your lawsuit, all you need to do is state the reason you are bringing it. Examples of reasons include breach of contract, withholding of security deposit, or request for return of personal property.

What happens if the Defendant files a response to the Original Notice?

A Defendant may not agree with the Plaintiff's claim. In order to dispute the claim in Court, the Defendant must file an Answer (Form 3.11) within 20 days of service of the original notice. A Defendant may think, for example, that nothing is owed or the amount claimed is too high. Then the Defendant files the Answer form on or before the deadline date set out in the Original Notice.

The Clerk of Court will then schedule the case for hearing before a Judge. Most of the time the hearing will be set no sooner than 3 days and no later than 20 days from when the Defendant files a response to the Original Notice. However, the Judge has the power to set a hearing date outside of this time period except in an eviction or "F.E.D." The Clerk will send out a notice of the hearing date to everyone involved. In larger counties the hearing date may be longer than the 20 days.

Filing an Answer form is all that is needed for the case to be scheduled for hearing. However, other written responses may be appropriate, ***in addition to*** the Answer. For example, it is often best to file a Counterclaim as well. Counterclaims and other such responses are discussed on pages 4 and 5.

What if the Defendant doesn't respond?

If the Defendant doesn't file any response with the Clerk of Court within the 20 day period, the Plaintiff can win by default. It may be clear from the Original Notice what amount the Plaintiff deserves to win. Then the Clerk will enter a judgment for the Plaintiff in that amount. The Plaintiff should ask the Clerk of Court to grant a default judgment. If it is ***not*** clear what the amount should be, arrangements will be made for a Magistrate to decide that issue at a hearing. The Plaintiff will be told of the time for that hearing. Each county may have a somewhat different process for presenting these cases to a Magistrate. It is important for the Plaintiff to contact the Clerk of Court's office. Find out how they determine defaults in a particular county.

If the Defendant loses by default, the Plaintiff must then file a document with the Clerk of Court which will allow a Judgment to be entered. This document is called: Verification of Account, Identification of Judgment Debtor, Affidavit re Military Service, Form 3.27. Some people file this document when they file the small claims action. When this document is filled out and filed, a Judgment will be entered. Sometimes the Court will schedule a hearing for you to appear at and "prove-up" your damage amount. It is important that you bring with you the proof of your claim for damages, as the Judge may ask to see it at the hearing. The winning party may try to collect on the Judgment once the Judge files the final judgment. See the section below about "What can I do with a judgment after I win one?"

A Defendant can ask the Court to set aside a default judgment as long as the Defendant tries to do so as soon as possible. This can't be done any later than 60 days after the judgment is entered. The Defendant needs to show the Judge a good reason for not filing an Answer in order to have the default set aside.

Note that although most of the time a Plaintiff would win by default, ***either*** side can win a Judgment by default. A Plaintiff may win by default due to the Defendant's failure to file an Answer or to show up for hearing. But a Defendant could also win by default, if that Defendant files an Answer ***and a Counterclaim***, then the Plaintiff doesn't show up for the hearing. Also, a Defendant who files an Answer but no Counterclaim will have the benefit of seeing the Plaintiff's suit dismissed if the Plaintiff doesn't show up for the hearing.

What to do after a judgment has been won will be explained below.

Is filing the Answer the only way a Defendant can respond to an Original Notice?

Although filing an Answer form is the most common response of a Defendant, other responses are possible. It is very important to file your Answer before the deadline. Also, when you file an Answer denying the suit against you, you can add more claims. These other ~~responses, and when each one is proper,~~ claims are explained ~~immediately~~ below.

Answer, Form 3.11: This form is served on the Defendant with the Original Notice. It denies the Plaintiff's claim, and informs the Clerk that there is a real dispute which must be scheduled for hearing before a Judge. Although the Answer form has space for a Defendant to write an explanation, it is not necessary to do so, as long as the form is signed. NOTE that even if a Defendant admits to owing the amount of money claimed, it still might be wise to file an Answer and get a hearing. That way, the Defendant can ask the Judge or Magistrate at the hearing to let the judgment be paid in affordable installments.

Counterclaim, Form 3.13: A Counterclaim is used when a Defendant wants to turn the tables and file a suit back against the Plaintiff. For example, Plaintiff may file an Original Notice demanding $200 from Defendant on the grounds that Defendant had agreed to pay Plaintiff that amount for doing certain repairs on Defendant's car. The Defendant may turn around and Counterclaim against the Plaintiff for $300 on the grounds that the repair work was done so poorly that the car was returned to Defendant in much worse shape that it was at the start.

In a situation like that one, suppose the Defendant had only filed an Answer, without the Counterclaim. Then the Defendant would still be able to try to show the Judge that the Plaintiff's poor work should result in nothing being owed to the Plaintiff by the Defendant. The Defendant would still be able to try to show that the suit should therefore be dismissed. But if the Defendant wants to end up winning money, that is, actually walking out of Court with a Judgment against the Plaintiff for some amount of money, a Counterclaim must be filed.

A Counterclaim doesn't have to be based on the same situation the Plaintiff is suing on. For example, Plaintiff might sue for $200 for payment of car repairs, as in the above example. But Defendant may Counterclaim for $400 on the grounds that Plaintiff borrowed Defendant's power mower and had left it outside all winter, damaging it badly.

Note that the subject of this Counterclaim (damage to lawn mower) is not related to the subject of the Original Notice (car repairs). In such cases, a Counterclaim must be filed even if the Defendant only wants to walk out of Court even up, with the suit dismissed. If an Answer is filed, but not a Counterclaim, at the hearing the Defendant can only bring up issues directly related to the subject of the Original Notice, in the hopes that the Judge will dismiss the case.

A Counterclaim should be filed at the same time the Defendant files the Answer. The Plaintiff does not have to file any response to the Counterclaim.

Cross-Claim Against Co-Defendant, Form 3.14: This is used when one Defendant (Smith) claims that another Defendant in the same suit (Jones) should have to pay Smith for part or all of the money the Plaintiff in the case wins from Smith. For example, Plaintiff sues Smith and Jones, in the same suit, for damaging Plaintiff's car when they were supposed to be repairing it. But Smith might Cross-claim against Jones, a Co-Defendant, on the grounds that Jones had supplied Smith with defective car parts, which caused Smith's repair work to do more harm than good.

You Must Use CURRENT Small Claims Court Forms!

You can get the forms you need at your local Clerk of Court or on-line at http://www.iowacourts.gov/Representing_Yourself/Civil_Law/Small_Claims/Small_Claims_Forms/ The online forms are "fillable." This means you can type the information for your case and then print documents to use in Court.

What Smith would basically be saying is this: "I may owe the Plaintiff money for returning the car in such bad shape, but if I do, Jones owes me money for supplying me with defective parts to do the repair work with."

If a Cross-claim Against Co-Defendant needs to be filed in a particular case, it should be filed by a Defendant along with the Answer. The Co-Defendant who is Cross-claimed against does not have to respond to the Cross-claim.

The two procedures explained next, namely, the ***Petition Against Third Party Defendant*** and ***Intervention***, are used only in somewhat uncommon situations. A ***Petition Against Third Party Defendant*** is a way of bringing a new person into a lawsuit - someone who wasn't a Plaintiff or Defendant at the beginning. ***Intervention*** is a way for an interested person to become involved in a lawsuit which has already been started between other people.

IF NEITHER OF THESE SITUATIONS IS LIKE YOURS, YOU MAY WANT TO SKIP THE FOLLOWING SECTION.

Original Notice and Petition against Third Party Defendant, Form 3.7: This is used by a Defendant to bring a new person into the Small Claims case. The new person would be someone who wasn't sued originally, but who may have to repay a Defendant for whatever the Plaintiff wins from that Defendant. This is just like the Smith and Jones example above, only Jones isn't a Co-Defendant, because the Plaintiff sued only Smith originally, and not Jones. So it is left to Smith to make Jones share the responsibility. Smith does this by having a Petition Against Third Party Defendant served on Jones, making him a part of the suit. In this case, Smith would become a Plaintiff (as well as a Defendant). Jones would be called a Third Party Defendant.

The procedures for filing an Original Notice and Petition Against Third Party Defendant differ from those for a Counterclaim and a Cross-Claim Against Co-Defendant in two ways. First, a Petition Against Third Party Defendant ***must*** be responded to (by an Answer, along with any appropriate Counterclaims, Cross-claims, or further Cross-Petitions). Without a response, the Third Party Defendant is automatically liable to the Third Party Plaintiff. (See page 5).

Second, although it is best to file a Petition Against Third Party Defendant along with the Defendant's Answer, it may be filed anytime within 10 days after the Defendant files the Answer. In fact, it can be filed even after that 10 days, if the Judge has given special permission to do so. ***But remember*** - it is very risky to delay in filing a Petition Against Third Party Defendant, since the hearing itself may be scheduled as soon as 5 days after the filing of the Defendant's Answer.

Is there a way for a person who is interested in an existing Small Claims suit to voluntarily become involved?

Original Notice and Petition for Intervention, Form 3.9: Sometimes a person who is not a participant in a Small Claims proceeding wants to become involved in it. A Petition of Intervention is used for that purpose. To "intervene" in an existing Small Claims suit, a person simply has to have a legal interest in the subject matter of the suit, or in the success of any party to the suit.

For example, say Thomas was a tenant in Leonard's rental property. Thomas sues Leonard for the return of the $300 rental deposit. Collins, who was Thomas' roommate, learns of the suit. Since Collins had given Thomas half of the rental deposit to pay to Leonard originally, Collins wants to take part in the proceedings in order to get his $150 back. Collins could do this by filing a Petition of Intervention at any time prior to the date scheduled for the Small Claims hearing. In this example, Collins would probably join with the Plaintiff Thomas against Leonard. In other fact situations, the person intervening might join with a Defendant, or even be ***against*** all other parties, not joining with anyone.

Is it possible to postpone a scheduled Small Claims hearing?

If there is a good reason to request a postponement, it can often be arranged. The person wanting to reschedule should contact the Clerk of Court as far in advance as possible. The Clerk may have the person making the request talk to the Magistrate about it, to explain the reason a postponement (also called a "continuance") is necessary. If the Magistrate does order a continuance, written notice of the new date and time is sent out to all parties.

The practice of granting continuances will vary from county to county. Some Magistrates will require you to contact the other side(s) and come to an agreement before the Magistrate will consider granting a continuance. You should ask your local Clerk of Court for details.

NOTE that if for some reason 90 days go by without a hearing or any other proceedings, a Small Claims action might be dismissed by the Clerk of Court. Then the case would have to be filed all over again.

What is a Small Claims hearing like?

Small Claims hearings are held before a District Associate Judge, District Judge ***or*** Magistrate. A Magistrate is the same as a Judge for purposes of Small Claims Court, although a Magistrate has limited powers in other areas. Small Claims cases are ***not*** decided by a jury.

The hearing itself is simple and informal. There are not a lot of complicated rules. The Judge will first look in the Court file to make sure that everyone involved has been served with proper notice. The Judge will also check to be sure that the case is a proper one for Small Claims Court ($5,000 or less, etc.). Then the Magistrate will have each witness swear an oath to tell the truth. Sometimes the Magistrate will ask each witness questions in order to get the whole story out. In addition, each party gets the chance to ask the other witnesses questions. If anyone brings a lawyer, the lawyer may take part as well. Some Judges will ask most of the questions, and others will have the parties ask the questions. You need to be prepared to ask questions and tell your side of the story.

When you prepare your case, you want to get your evidence ready. Think about how you will respond to the other side's evidence. In most small claims actions, you will not know exactly what evidence the other side will be using. In ***rare*** cases you may be allowed to do "discovery" of the other side. "Discovery" is a way you can find out what the other side's story and evidence is. In Small Claims, it may be possible to "depose" a person, that is, take the person's testimony under oath in very rare cases. It also may be possible to get documents through a subpoena. You should talk to a lawyer if you want to do this.

The hearing must be recorded. The main reason for recording it is so that a different Judge can listen to it later, if the case is appealed. Appeals will be discussed later.

Even though Small Claims cases are public, and anyone may watch, generally there will be no one in the Courtroom except the parties, their witnesses and the Magistrate.

Most Magistrates will ask the parties before the hearing starts if they have tried to settle with the other side. This gives both sides one last chance to avoid a hearing or judgment.

How should I prepare for a Small Claims hearing?

The first rule of winning in Small Claims Court is to be organized. Before you go to Court, you should practice telling your story from beginning to end. This will allow you to get any evidence which you might want to present in the proper order, and you will be able to present a more organized story to the Magistrate. This is also the time to decide whether there are any witnesses which you may want to have testify to support your case. Generally, to be helpful, a witness must have personal knowledge of some disputed fact in the case. If there are witnesses, you should listen to their stories to see if they will help you tell your side.

If you are the Plaintiff or have filed a counterclaim, you need to prepare your case to show why the other side is at fault (liability) ***and*** how you were damaged by the other party ***and*** how you came up with the dollar amount you are asking the Magistrate to award you.

If you want, you can check with the Clerk of Court to find out when a Small Claims hearing is scheduled at your local Courthouse. You may then want to go and sit in on it. Since most trials in the United States are public, there should be no objection, and you will have the chance to see first-hand how a Small Claim is handled.

When it's time for your hearing, you should gather up whatever papers, photographs, or things which you would want to show the Magistrate. For instance, in a landlord-tenant dispute, a tenant may wish to bring to Court the following items:

- a copy of the written rental agreement, if any.
- copies of written notices the tenant gave the landlord or visa versa.
- photographs of the rental property, showing cracked windows, a flooded basement, or the like.
- actual pieces of plaster that fell onto the kitchen table during dinner.

A Small Claims hearing is the time when you want to convince the Magistrate that you are right. Do not try to convince the other side they are wrong, concentrate on telling your story to the Magistrate.

What if I want a person to be there as a witness, but the person doesn't want to go?

A "subpoena" can be used in this situation. A subpoena is basically a paper ordering a person to show up in Court for a scheduled hearing, so that the person's testimony can be heard by the Judge. You may want to issue a subpoena even for a cooperative witness, if, for example, the witness has to show an employer the subpoena in order to get permission to miss work.

A subpoena can also be used to have papers or other important evidence brought to Court by ordering the person having them to come to Court and bring the desired items along. Such items should be specifically described in the subpoena, to avoid confusion.

To "subpoena" a witness, go to the Clerk of Court as far in advance of the hearing date as possible, and request the Clerk to issue a subpoena to the person in question. The Clerk can explain to you how costs and service of the subpoena are handled.

Do I have to know the law before I go to Small Claims Court?

It is ***not*** necessary to know exactly how the law applies to your situation before going to Small Claims Court. It is the Judge's duty to know the law and to apply it to the facts which come out at the hearing.

But it can still be helpful to have some idea of what the basic outlines of the law are in your case. It is helpful in deciding whether you have a good case, and also in deciding what you should emphasize to the Judge. If you have taken the trouble to learn what the law is on some specific point, it would be wise to respectfully mention your understanding of the law to the Judge at the hearing, if only to direct the Judge's attention to what you feel is important.

How can I find out about how the law applies to my situation before going to Court?

There are two main ways to find out what the law has to say about your set of circumstances.

First: You could talk to a lawyer. Of course, most lawyers will charge you a fee for giving you any advice or information. But since the information could be very helpful, it might be well worth it. If you have a low income, a lawyer may give you free advice as part of the lawyer's professional obligation to make legal help available to low-income people. Another possibility would be to go to the Legal Aid office serving your area or call 1-800-532-1275 to ask for free legal help.

Second: You could look up the law yourself. Most public libraries will have a current copy of the six-volume Code of Iowa, along with an easy-to-use index. Courthouses are also likely to have the Code of Iowa. With a little patience and careful reading, you can often find what you are looking for. You should not be afraid to tell the Small Claims Judge at the hearing what you found out. It might help the Judge apply the law to your case.

BUT REMEMBER: Even the Code of Iowa does not contain all the law, and the Code of Iowa itself can sometimes be hard to understand. So while it is a good idea to become comfortable with looking up the law yourself, advice should probably be obtained from a lawyer, if possible, in important or complicated situations.

Are There Alternatives to Having a Judge Decide the Case?

Some counties have set up mediation programs for cases that have already been filed with the Court. Usually, mediation is not set up until the people come to the Courthouse for the hearing. The Judge, Magistrate, or mediator (before you even go into the Courtroom) will often ask the parties if they want to try mediation. In some parts of the state it is called "mandatory mediation", however you do not have to reach an agreement. If both parties want to try it, a volunteer mediator will help them try to reach an agreement. If they don't reach agreement, they can go back to the Courtroom and have their hearing. In other places, mediation may be set up before the Court hearing and may not even take place in the Courthouse. In those places, a Court hearing is only set up if mediation does not work. It is important to at least attend a scheduled mediation, even if you do not want to mediate so that the Court knows you are wanting to be part of the case.

If the parties come to an agreement, the Judge may make it an official Court Order. The mediator does not say who is right, or who should win. The mediator helps the parties come to their own agreement, instead of having the Judge tell them what will happen. Small Claims Court mediation is usually free. If you want to find out if your county has a small claims mediation project, or what it's like, you can get more information from the Clerk of Court.

What will the Magistrate do at the end of the hearing?

After hearing all the evidence, the Magistrate will either dismiss the case or enter a Judgment against the losing party. A Judgment is basically an official statement by a Court that one person (the one winning the Judgment) is entitled to collect a certain amount of money from another person (the one the Judgment is against).

The Magistrate may make a decision right away, with everyone still in Court. The Magistrate could take more time, and send a copy of the decision to each party a few days after the hearing. A Magistrate doesn't have a specific time limit to reach a decision. However, almost all will be done within 60 days and most within 30 days.

If a Judgment for a certain amount of money is entered against a person, the Magistrate may decide that it can be paid off in installment payments. A person who is being sued, and who expects the Magistrate to enter a Judgment against him or her in ***some*** amount, may want to request that installment payments be arranged. As a part of the Magistrate's decision one or the other of the parties will be ordered to pay the Court costs. As a rule, the losing party is ordered to pay Court costs. However, the Magistrate could choose to divide the costs between the parties in any way the Magistrate believes to be fair.

What if I don't agree with the Judge's decision in Small Claims Court?

One party or the other is likely to be dissatisfied with the Judge's decision. If the dissatisfied party feels strongly about it, he or she can appeal, and have the Small Claim decision reviewed by a District Judge.

An Appeal is taken in either of two ways. The first way is for the person wanting to appeal can say so to the Small Claims Judge at the end of the Small Claims hearing. The second way is to give a written notice of appeal to the Clerk of Court within 20 days after the Judge decides the Small Claims case, using the Notice of Appeal form, Form 3.26.

Whether the appeal is begun orally at the end of the hearing or by filing a written notice of appeal, a filing fee will have to be paid to the Clerk of Court. This must be done within 20 days after the Small Claims decision. Otherwise, the case will never be reviewed by a District Judge. The filing fee is $185. **NOTE:** If you can't afford the filing fee on appeal, you may want to try to get a Judge's permission to proceed without payment of fees. The Request form on pages 17 and 18, with appropriate changes, could be used to seek the Court's permission. More about proceeding without payment of fees is set forth on page 3.

When the filing fee is paid (or permission to proceed without fees is obtained), a District Judge will promptly review the case. The Judge will examine the notes of the Magistrate of Judge who heard the witnesses at the hearing. He or she will look at any photos, things, or documents. The Judge will review the recording of the hearing. The District Judge will then decide whether the Small Claims Judge's decision was correct. The District Court is free to make its decision based on what it thinks is right. This is called a "de novo" review.

If the District Judge feels that more evidence should be heard before a decision can be made, the Judge can order the desired evidence to be presented. The Judge would then decide the case on the basis of the new evidence as well as the evidence at the original Small Claims hearing.

Is it possible to appear before the appeal Judge to present arguments about the case?

Yes. If either party wants to appear before the appeal Judge to argue about some aspect of the case, he or she must check the box on the appeal form. Form 3.26. After receiving such a request, the Judge may schedule a time for the parties to appear and present arguments.

The opportunity to argue issues before the appeal Judge should not be taken lightly or seen as a chance to rehash the whole case. After all, the Judge will already have the notes and/or tape-recording from the first hearing. So, in most cases a party should ask for oral argument only if he or she have a specific important point to argue. For example, a party may want to argue on appeal about whether, given the evidence, the Magistrate's decision was fair and lawful; or a party may want to persuade the appeal Judge of the need for a special hearing to receive new evidence.

If a person loses in Small Claims Court, and then appeals, can the other side try to collect on the judgment while the appeal is still going on?

The answer to this is yes, the winning party can start trying to collect immediately, unless a Judge orders a halt to the collection activity until the appeal process is finished. Of course, if a case is being appealed, the winning side will probably want to wait until the appeal is decided before trying to collect. But to make sure that no collection begins before the appeal decision, the person who is appealing can go to the Clerk of Court and give the Clerk money for an appeal bond in the amount stated in the original Small Claims decision. If that decision did not state an amount for the appeal bond, the Judge or Magistrate can be asked to set it.

When the appeal bond is filed, attempts to collect on the judgment are "stayed," that is, must be stopped until the appeal review is done.

You Must Use CURRENT Small Claims Court Forms!

You can get the forms you need at your local Clerk of Court or on-line at http://www.iowacourts.gov/Representing_Yourself/Civil_Law/Small_Claims/Small_Claims_Forms/ The online forms are "fillable." This means you can type the information for your case and then print documents to use in Court.

Can anything be done about the District Judge's decision on appeal, if I don't agree with it?

A person who is dissatisfied with the District Judge's decision on appeal may request further review by the Iowa Supreme Court. To request a review by the Iowa Supreme Court, you must file a written Application for Discretionary Review with the Clerk of the Iowa Supreme Court. There is no form for this. The address is:

Clerk of Court
Iowa Supreme Court
Iowa Judicial Building
1111 East Court Avenue
Des Moines, Iowa 50319

Even if the Petition for Review is filed on time, there is no guarantee that the Iowa Supreme Court will review the case. It is simply up to the Iowa Supreme Court whether any further review will take place.

Since the procedures are more complex at this level of appeal, it would be wise to talk to a lawyer before deciding whether to appeal from the District Judge's decision. A lawyer's help at this stage would be extremely valuable.

What can I do with a judgment after I win one?

Of course, winning a judgment for money is not the same thing as having the money itself. The judgment is the Court's decision that you are owed a certain sum of money. Often the person you got the judgment against, the judgment debtor, will promptly satisfy the judgment by paying you. After all, credit bureaus keep track of such judgments, and so a judgment debtor who wants a clear credit record is eager to pay off all judgments.

But sometimes the judgment debtor will refuse to pay. If this happens, there are a few steps you, the judgment creditor, can take to turn the judgment into money.

1. The Judgment Lien

As soon as the judgment is filed at the Courthouse the Clerk of Court enters it in the Lien Index for that county. When this happens, the judgment debtor becomes unable to sell certain real estate the debtor then owns or later acquires in that county without first paying off the judgment. This restriction on the judgment debtor's ability to sell his or her real estate lasts 10 years from entry of the judgment. More information on how long judgments and judgment liens last appears on page 13.

2. Execution on Personal Property, Bank Accounts or Wages

Although the judgment lien may eventually result in payment, it is not necessary for a judgment creditor to sit and wait for a real estate transfer to occur in order to be paid. The judgment creditor may ask the Clerk of Court to issue an 'execution' as soon as a judgment has been obtained. An 'execution' tells the sheriff to take steps to get the money from the judgment debtor. These steps include taking certain items of the judgment debtor's property and selling them, taking possession of the debtor's bank accounts, and garnishing part of the debtor's wages. Money collected by the Sheriff from the judgment debtor will be used to pay the Court costs and Sheriff's fees involved in these collection procedures. But, if no money is collected from the judgment debtor, the person requesting collection, the judgment creditor, will get stuck paying such fees and costs. So you may want to think twice before starting execution procedures against someone who appears to be quite poor.

To get the execution process started, fill out the Notice of Execution (Praecipe), Form 3.25. Take it to the Clerk of Court and file it. You will need to pay a fee to begin the process. Ask the Clerk to give you a Direction to Sheriff or a Dictation to Sheriff form. Different counties have different forms. It is on this form that you will be providing the Sheriff with the information necessary to collect on the judgment. If at all possible, you should have certain information ready to put on this form. Some of the details that would be helpful are listed below.

- Know where specific items of the judgment debtor's non-exempt property can be found. (The meaning of "non-exempt" is discussed in the next section.)
- Know where the judgment debtor has savings and/or checking accounts.
- Know where the judgment debtor works.

By giving such information to the Sheriff, the chances that the Sheriff will be prompt and successful in collecting on the judgment are greatly improved. Once a party obtains a judgment and wants to execute by garnishment, that party must serve a Notice of Garnishment on the person whose property is being garnished. (See Form 3.19) This notice informs the garnished person that they have a right to ask the Court to exempt property or reduce the garnishment. This notice gives the person who is garnished 10 days to file an objection and request a hearing in Court. If no hearing is held or if the hearing is held and the objection is denied by a Judge, the person requesting the garnishment needs to file an Application to Condemn Funds (Form 3.17) with the Court. The Court will issue an Order Condemning funds which will allow the Sheriff to transfer the money received from the property to the Clerk of Court so the Clerk can transfer the money to you.

Which items of the judgment debtor's property can be executed upon by the Sheriff?

(The meaning of 'exempt' and 'non-exempt' property.)

Under the law, there are many items of property which are "exempt from execution." To protect exempt property, the debtor ***must*** object and file a claim for exemption. Only ***non-exempt*** property can be executed upon but the debtor must object in order to keep or get back exempt items. See the information on page 10.

A list of exempt property follows. It is ***not*** a complete list, but includes most of the important exemptions. Additionally, some of the exemptions below and on the next page are provided for ***each*** debtor. If a husband and wife are both liable on a debt and own property jointly, they may each claim a full exemption. The Iowa Legal Aid booklet *Bankruptcy* contains a more thorough explanation of what property is exempt. For a complete list of exemptions, see a lawyer or check the Code of Iowa, Chapter 627.

PROPERTY	DOLLAR ($) LIMITATION
Homestead (house and surrounding land used and occupied by the debtor and his/her family) **NOTE:** This exemption does not apply if you have given a voluntary mortgage of the house to a bank, credit union, or other party and a foreclosure is pending.	Not to exceed one-half acre within a city or 40 acres outside a city. No dollar limit imposed.
All clothing and suitcases of the debtor or debtor's dependents kept for actual use, household furnishings, musical instruments and household goods which include cameras, tvs, and compact disc players.	$7,000
Books, portraits, and paintings.	$1,000
Burial plot not exceeding one acre.	None
Professionally prescribed health aids for the debtor or a dependent of the debtor.	None
One motor vehicle	Not to exceed $7,000 in value (Use current resale value, in other words, not what you paid but what you would get by selling the property now.)
If not a farmer, the tools of trade of the debtor or dependent.	$10,000
If a farmer, any combination of implement, equipment, livestock, and feed for livestock.	$10,000
A wedding or engagement ring owned and received by the debtor on or before the date of marriage.	None
Cash, bank deposits or any other personal property not otherwise provided for.	$1,000
Cash value of a life insurance policy if beneficiary is spouse or dependent.	$10,000 if purchased within 2 years of the execution. Unlimited if purchased more than 2 years before the execution.
Social Security, unemployment, public assistance, veterans, or disability benefits.	None
Alimony and support.	To the extent reasonably necessary for support of debtor and dependents.

What if the judgment debtor wants to claim some property as exempt?

The judgment debtor can file the Affidavit of Property Exempt from Execution, Form 3.21 before the judge decides the case or after judgment is entered. This form tells the creditor that certain property is exempt.

After getting the notice that property is being taken to pay off the judgment (usually Notice of Garnishment, Form 3.19), the judgment debtor can file a Motion to Quash Garnishment and Request for Hearing, Form 3.20, in order to protect exempt property. The judgment debtor will have to explain why the property is exempt and be able to show at the hearing that the property is exempt. For further information about exempt property see Iowa Legal Aid's booklet *Rights and Responsibilities of Debtors*.

If the Sheriff takes items of property of the judgment debtor, what happens then?

After taking non-exempt items of the judgment debtor's property, the Sheriff arranges for the property to be sold. First, three weeks' notice of the sale is given in advance by posting a sale notice in three different public places in the county (including the Courthouse). If the property is worth more than $200, the notice must also be published in a local newspaper once each week for two weeks. The sale itself must be by public auction, held between 9:00 a.m. and 4:00 p.m.

If the property sells for more than the amount to be collected, the extra is returned to the judgment debtor. If it sells for less, the judgment creditor may try another execution.

Are there limits on what bank accounts can be executed upon by the Sheriff?

Yes. Money from a few sources is not subject to execution. Examples include social Security benefits, unemployment benefits, and FIP. If you know that such a benefit program is the judgment debtor's only source of income, you should not try to execute on it. And, if you have a judgment against you and some of your exempt money is taken by the Sheriff from a bank account, you should tell the Sheriff immediately and contact a lawyer if necessary.

NOTE that garnishing an account is a lot different than garnishment of wages. With wages, where there are strict limits on how much can be garnished (see below and on the next page). But there are no limits on the amount of money that can be garnished from an account to pay off a judgment, as long as the money in the account is not from a protected source.

How soon do I get money taken from the judgment debtor's accounts by the Sheriff?

If the Sheriff takes possession of the money in a judgment debtor's checking or savings account, that money will then be turned over to the Clerk of Court. After various bookkeeping steps are taken and the costs of the execution procedures are subtracted, the rest of the money (equal to or less than the amount of the judgment) is turned over to the judgment creditor. This could all happen as quickly as two to three weeks from when the money is taken from the account by the Sheriff.

How does garnishment of the judgment debtor's wages work?

Basically, garnishment of wages works the same way as the other execution procedures. The judgment creditor uses the Dictation to Sheriff form to supply information to the Sheriff (through the Clerk). Then the Sheriff may try to garnish wages as one possible way to collect. By passing on to the Sheriff details about the judgment debtor's job situation, the Sheriff is much more likely to give garnishment of wages a try.

Are there any limits on how much of the judgment debtor's paycheck can be garnished?

Yes. There are two limitations on how much of a debtor's wages can be garnished. One is the amount that can be garnished per calendar year (2012, 2013, etc.). The second is the amount that can be garnished per pay period (weekly, every two weeks, two times per month, or monthly).

The amount that can be garnished per calendar year depends on the debtor's expected earnings during that calendar year. "Earnings" are money you get paid for work whether called wages, commission, bonus, or anything else.

Here are the limits each judgment creditor can take from earnings in one year:

Expected Earnings Calendar Year	**Limit on Wage Garnishment per Calendar Year for each Judgment Creditor**
$0-$11,999	$ 250
$12,000-$15,999	$ 400
$16,000-$23,999	$ 800
$24,000-$34,999	$1500
$35,000-$49,999	$2000
Over $50,000	10% of expected earnings

The second limit is the total amount that can be garnished per pay period. This limit depends on the type of debt on which the debtor was sued. For purposes of wage garnishment limit, debts are either "consumer debts" or "non-consumer debts."

A ***consumer debt*** is a debt: (1) for a personal or family purpose, not a business reason; (2) for which you are charged interest, or a finance charge, or you pay in installments; and (3) for less than $25,000. Common consumer debts are credit cards and car loans.

A ***non-consumer debt*** is everything that is not consumer debt.

The limitation on the amount of wages that can be garnished depends on the federal (not Iowa) minimum wage. The federal minimum wage is $7.25/hr.

The law states that in a consumer debt, either 1) 75% of disposable earnings or 2) 40 times the minimum wage is exempt (protected) from garnishment, whichever is greater. In a non-consumer debt, the greater of 1) 75% of disposable earnings or 2) 30 times the minimum wage is exempt from garnishment.

"Disposable earnings" are your earnings (the amount of money you get paid for work) minus social security (FICA), minus federal withholding, minus state withholding, and minus anything else required to be withheld by law.

The following chart has the amounts that a debtor can keep for different pay periods and for consumer/non-consumer debts:

Pay Period	Non-Consumer Debt	Consumer Debt
How the Amount is Figured	**(30 times the Minimum Wage of $7.25)**	**(40 times the Minimum Wage of $7.25)**
Every week	$217.50	$290
Every 2 weeks	$435.00	$580
2 TIMES PER MONTH	$471.25	$628.34
MONTHLY	$942.50	$1,256.67

These limits apply to ***wages*** only. They do not apply to garnishment of other assets such as bank accounts.

The law concerning garnishment also provide for a special Court hearing. The hearing can be called for by the debtor or the creditor. Its purpose is to decide the proper level of garnishable wages, based on total income. The law grants the Judge specific power to set the garnishment level in a given case below what the above income formula suggests, if special needs of the household or other factors warrant it.

As stated earlier, these limits only apply to wage garnishment for judgment creditors. There are very different limits on garnishment for child support or back taxes. In general, those types of garnishment can take out a lot more of your wages.

The Iowa Supreme Court has held that wages put in a checking or savings account are still considered wages for 90 days. The money is protected under wage garnishment law for 90 days.

If the Sheriff comes back empty-handed (or with less than enough to satisfy the judgment) is there anything else I can try?

There is another step available to a judgment creditor. It may be of use if there is a reason to believe the judgment debtor has some non-exempt property that could go toward satisfying the judgment. Then it may be worthwhile to force the debtor to answer questions about his or her property holdings and financial situation under oath. This way, the judgment creditor can get details about the debtor's exact situation. Then the judgment creditor can then go through the general execution procedures again, giving new information to the Sheriff.

This process is usually called a "Debtor's Examination." It starts with getting a Court Order for the judgment debtor to come to Court. There is no form for this. Then it involves careful questioning of the debtor under oath. Because of these factors, it is probably best to see an lawyer about how to proceed.

What if the judgment debtor is "collection-proof?"

"Collection-proof" means without property or wages which can be executed upon to satisfy a judgment. If a person is truly collection-proof, they have no garnishable wages, and the only money or property they have is exempt from execution.

You should try to figure out if a person is collection-proof before you decide to spend the time and effort to bring a lawsuit against him or her. But if you have gone ahead and obtained a judgment against someone who is collection-proof, you should wait to collect for the time being. You can always try collection again if the person's situation changes in the future. (See the next section for a discussion of renewing judgments.)

Are there time limits on taking legal steps to collect on a judgment?

Yes. Generally speaking, the legal steps discussed above may be taken to collect on a small claims judgment within 20 years of entry of that judgment.

A judgment lien on real property lasts for 10 years from the time of the judgment. However, it is possible to extend the time for taking legal action to collect on a judgment. Any time after 9 years have passed since entry of the judgment (but ***before*** the full 10 years have passed), the judgment creditor may start a special proceeding in Court which will renew the life of the judgment. This Court proceeding will give the judgment creditor another 10 years to collect through legal processes, and will also reinstate the judgment lien for 10 more years. There are important exceptions to the general rules on how long a judgment lasts. ***First***, if the judgment debtor is not a resident of the State of Iowa during part or all of the time before a judgment expires, the period of non-residency is added to the life of the judgment. ***Second***, a judgment based on a claim for rent lasts for only 2 years, and cannot be renewed.

Do I need a lawyer to renew a judgment?

Generally speaking, it would be wise to talk to a lawyer about trying to renew a judgment. A legal action to renew a judgment is uncommon enough --- and may be complicated enough --- to warrant a lawyer's involvement.

The execution procedures themselves, however, can be started at the Clerk of Court's office without a lawyer, although a lawyer's advice may be helpful.

What if I win a judgment, the Judge lets the judgment be paid off in installments, but then the judgment debtor doesn't keep up with the installment payments?

As mentioned earlier, the Judge or Magistrate in Small Claims Court has the power to set up installment payments for people who lose and get judgments entered against them. For example, if Smith sues Jones and wins a judgment, the Court might allow Jones to pay the judgment off in monthly or weekly installments. Jones would pay the installments directly to Smith, making sure that proof of payment is available (by getting receipts or paying by check). As long as Jones keeps up on the installment payments, Smith cannot use any of the 'execution' procedures to collect on the judgment.

It may be the case that Jones does not make the payments according to schedule. Then Smith can file an "Affidavit of Default" (Form 3.16) with the Clerk of Court. Smith can then use the 'execution' procedures explained above to collect whatever part of the judgment remains unpaid.

What if I do get full payment of the judgment from the judgment debtor?

It may be the case that your judgment against the judgment debtor is fully collected, either by voluntary payment or through execution procedures. Then you must promptly acknowledge satisfaction of the judgment in every county in which the judgment was filed as a lien. To acknowledge satisfaction of the judgment, you file a Release and Satisfaction of Judgment (Form 3.23).

GLOSSARY

Since some of the words and phrases used in this booklet are probably unfamiliar, here are some brief definitions of selected terms. These definitions will not be very precise; they are only meant to provide some guidance in understanding the contents of this booklet.

Answer An 'Answer' (sometimes called the Appearance and Answer of Defendant) is the paper a Defendant files in response to the Original Notice.

Appeal An 'Appeal' is a review of a Court decision by a 'higher' Court.

Appearance An 'Appearance' refers to when a person takes part in a Court proceeding. A person 'appears' by filing papers with the Clerk of Court.

Case A 'Case" or "Court Case" is any legal procedure where one person is suing another person.

Certified Mail Certified Mail' is a way of mailing something and getting proof that it was received. The person receiving it signs a receipt, which is then returned to the sender.

Clerk of Court The 'Clerk of Court' is the person who, along with a few assistants, receives Small Claims papers and schedules hearings. The Clerk has an office in the Courthouse, and that office can provide information about Small Claims procedures.

Co-Defendant A 'Co-Defendant' is any Defendant who is involved in a Small Claims suit along with other Defendants.

Counter-claim A 'Counterclaim' is the title of a legal paper used when a Defendant, who has been sued wants to turn around and sue the Plaintiff in response.

Court Costs 'Court Costs' are the total of fees and payments which have to be made to the Clerk of Court or Sheriff's Department for the costs of filing and serving papers and for similar expenses.

Cross-Claim Against Co-Defendant This is the title of a legal paper used when one Defendant in a Small Claims suit wants to sue a co-Defendant. This is described more fully in the main section of this booklet.

Default A party in a Small Claims suit "defaults" when one of two actions take place. A party defaults when he or she fails to file an Answer when one is required. Another way to default is by failing to show up at a scheduled hearing, without getting a postponement in advance. Then a judgment is entered against the party that defaults.

Defendant A 'Defendant' is a person being sued by someone else.

Dismissal A 'Dismissal' of a suit occurs when a Judge decides that the person who filed the suit does not have a basis for winning. A suite can also be dismissed if a party doesn't show up for a scheduled hearing.

Dismissal with Prejudice This is where a suit is dismissed, but cannot be filed again.

Dismissal without Prejudice This is where a party's suit is dismissed, but may be filed again if the party chooses

Disposable Earnings Disposable earnings means that part of any earnings of any person remaining after taking out from those earnings any amounts required by law to be withheld.

District Court 'District Court' is the Court located in the County Courthouse. Small Claims Court is a part of District Court.

Eviction An 'Eviction' is the legal process a landlord uses to remove a tenant who is holding the property illegally.

Evidence 'Evidence' is the total of what a Judge considers in making a decision about what actually happened in a disputed situation. It includes what people say, photos, papers or anything else presented to the Judge.

Execution This refers to the legal procedures a person who has won a money judgment against someone else can use. The procedures allow the person to collect the amount of the judgment.

File To "File" a paper or legal document means to give it to the Clerk of Court, to put it in a special Court file with other papers relating to the same case. Most of the time, papers are not considered filed until the Clerk file-stamps the papers.

Forcible Entry and Detainer This is the special name used in Iowa for an eviction also known as an F.E.D.

Garnishment 'Garnishment' is a procedure for collecting a judgment. It involves the Sheriff taking possession of a judgment debtor's savings or checking account or a portion of the judgment debtor's wages.

Hearing A 'Hearing' is where a Judge receives and considers evidence about a legal dispute.

Intervene To 'Intervene' is to become involved in an existing Small Claims suite by filing a Petition for Intervention.

Intervention This is the legal procedure a person can use to become involved voluntarily in a Court case even though the person was not a Plaintiff or a Defendant when the case began. A more complete description is contained in this booklet.

Iowa Supreme Court Located in Des Moines, this is Iowa's highest Court.

Judgment A 'Judgment' or 'Money Judgment' is a Court Order. It entitles one person to use legal processes ("execution") to collect a certain amount or money from another person.

Judgment Creditor A 'Judgment Creditor' is the person who wins a judgment against someone else. Then he or she has the right to take certain legal steps to collect money from that person (the judgment debtor).

Judgment Debtor A 'judgment Debtor' is the person who loses a Court case and has a judgment entered against him or her.

Judgment Lien When a person wins a judgment, a 'judgment lien' is put on record by the Clerk of Court. The lien blocks transfer of real estate in that county until the judgment is paid off.

Jurisdiction 'Jurisdiction' means the legal power of a Court to decide a legal dispute. For example, Small Claims Courts have jurisdiction over disputes involving $5,000 or less, and also over evictions (Forcible Entry and Detainer actions).

Magistrate A 'Magistrate' is basically the same as a Judge, only with fewer powers. Often it is a Magistrate who decides a Small Claims dispute.

Motion A 'Motion' is a written request made to a Judge, such as a Motion for a Continuance or a Motion to Dismiss.

Oath An 'Oath' is a pledge to tell the truth. Anyone giving evidence in Small Claims Court must first take an oath, swearing to be truthful.

Original Notice This is the legal paper which begins a Small Claims suit. The Plaintiff fills out an Original Notice, files it with the Clerk, and it is later delivered to the Defendant. This is described more fully in the main part of this booklet.

Party A 'Party' is any person who is formally included in a Court case, such as a Plaintiff or Defendant.

Petition Against Third Party This is the title of the procedure (and legal form) which allows a party to a lawsuit to force a person who is not yet involved in the suit to become a party. This is explained more fully in the main part of this booklet.

Plaintiff A 'Plaintiff' is the person who begins a lawsuit by completing an Original Notice and having it delivered to the Defendant (or Defendants).

Replevin A type of legal action where the Plaintiff requests the Court to order Defendant to return property in the possession of the Defendant to the Plaintiff.

Return of Service This is a paper signed by a person who was responsible for delivering legal documents upon one of the parties in a suit. It shows when delivery was accomplished. A Return of Service should be in the Court file for each legal document served upon someone.

Satisfy/Satisfaction A judgment is "satisfied" when the amount of the judgment is fully collected from the judgment debtor.

Service (of Process) This refers to the delivery of legal papers upon a person. As a rule, a person is 'served' with papers in one of two ways. It can be done by certified mail. It can also be done by actual in-hand delivery by a deputy or some other person.

Subpoena A 'Subpoena' is a paper ordering someone to come to Court at a particular time in order to present evidence to a Judge. To 'subpoena' someone is to delivery such an order to them.

Sue/Suit To 'Sue' someone is to file the papers necessary to force them to become involved in a dispute in Court. A person who sues someone is usually demanding something specific from them, such as a certain amount of money. A 'Suit' or "Lawsuit' is the name for the whole set of procedures involved in taking a dispute to Court.

Testimony A person gives 'Testimony' or a person 'testifies' when he or she gives evidence to a Judge under oath.

Third Party Defendant This is a person who is served with a Cross-Petition Against Third Party. In that way, the person served is forced to become a party to an existing lawsuit. (See other parts of this booklet for details.)

FORMS

You can get most of the forms from your Clerk of Court. One form you cannot find elsewhere, "Application and Affidavit to Defer Payment of Costs," is on pages 17 and 18. A fillable version is online at iowalegalaid.org Some counties may have different forms. Your Clerk of Court will be able to help you get copies of the form used in your county.

The Iowa Judicial Branch website has information on Small Claims Court including the forms talked about in this booklet. See the first page of this booklet for where to find online forms and other information.

APPLICATION AND AFFIDAVIT TO DEFER PAYMENT OF COSTS

PRINT CLEARLY

A. IN THE DISTRICT COURT FOR _____ **COUNTY, IOWA**

(*County where the case is filed*)

B. NAMES

_____

PLAINTIFF *(Full name: first, middle, last*)

_____

PLAINTIFF *(Full name: first, middle, last*)

VS.

_____

DEFENDANT *(Full name: first, middle, last*)

_____

DEFENDANT *(Full name: first, middle, last*)

SMALL CLAIMS DIVISION
Case number:

_____

APPLICATION AND AFFIDAVIT TO DEFER PAYMENT OF COSTS
(CLERK STAMPS HERE)

C. REQUEST

1. *(Check one):* I am the: ☐ Plaintiff ☐ Defendant

_____

(Full name: first, middle, last)

2. *(Check one):* I am: ☐ filing a case ☐ appealing a case.

☐ The case or appeal is for: *(describe type of case, for example filing for return of property, security deposit or for money owed to you*) _____

_____

_____

3. *(Check all that apply):*

a. ☐ I am unable to pay the filing fee or service costs or other court costs.

b. ☐ I ask the Court for permission to proceed without prepayment of costs and fees.

c. ☐ I am filing this application and affidavit in good faith.

d. ☐ I believe I am entitled to what I am asking for in this case.

D. FINANCIAL INFORMATION

4. Number of people living in my household: _____

5. My household income is $_____ per month.
(Put the amount of all income and benefits before deductions.)

6. List where your household income comes from (examples: employer or benefits such as unemployment, Title 19, FIP) _____

_____

7. My household has the following monthly expenses:

a. Rent or mortgage $_____

b. Utilities $_____

c. Telephone $_____

d. Food $_____

e. Transportation $_____

8. I have $_____ in cash, checking and savings.

E. FORM

This form was developed by:
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DES MOINES, IOWA 50314
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F. OATH AND SIGNATURE

I, _____ have read the above Application and
(*Print your name*)
Affidavit. I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the information I have provided in this Application is true and correct and that I gave or mailed a copy of this document to the other party or the other party's attorney (if any) on:

(Date): _____, 20____. _____
(*Your signature)*

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by
IOWA LEGAL AID

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