

~~Do not file if you have a question about your case or if you do not understand the rules of the Small Claims Court.~~

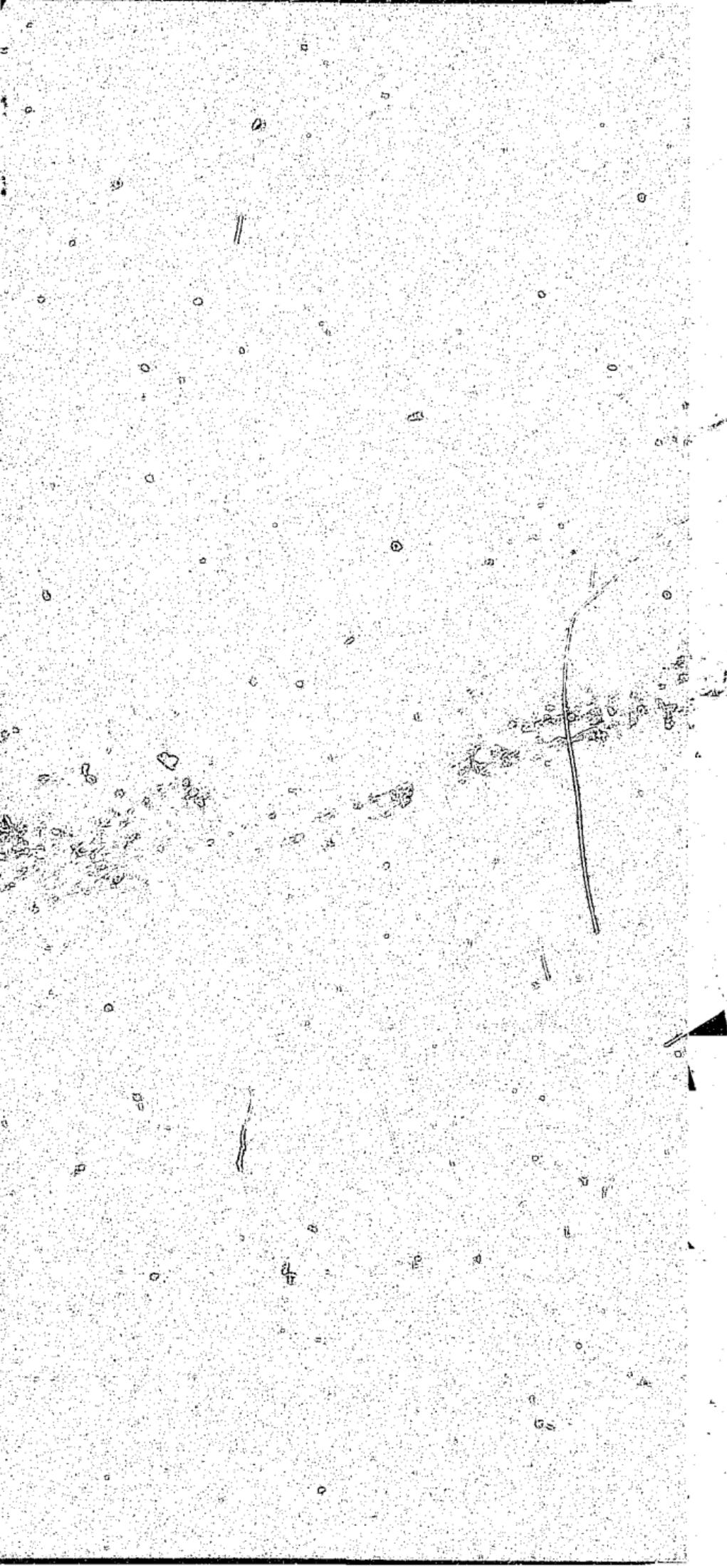
**HOW TO USE
THE
SMALL CLAIMS DIVISION
OF THE
DISTRICT COURTS
IN THE
COMMONWEALTH
OF
KENTUCKY**

**Attorney General's Office
Division of Consumer Protection
Frankfort, KY 40601**

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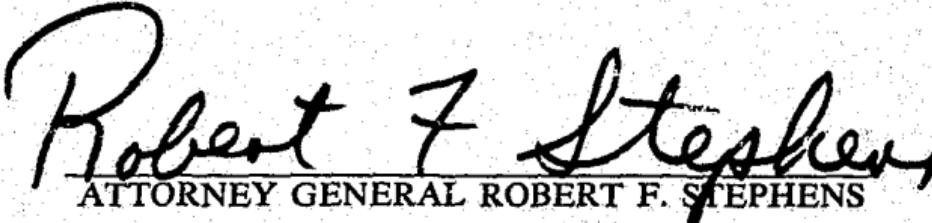


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ACQUISITIONS

Beginning on the first Monday of January, 1978, the Small Claims Division of each district court in Kentucky will be available to provide the public with a forum for small claims. This pamphlet has been prepared to explain the operation of the Small Claims Division and to assist you in presenting your small claims case. All legal terms and all court procedures are explained in common, everyday language that can be easily understood. To present your case in the most effective way, you should first read this pamphlet *completely* to properly present a small claims case. The checklist at the end of the pamphlet is provided to highlight the important steps you should take in using the Small Claims Division.

If our office can be of service to you to answer questions regarding the Small Claims Division, please do not hesitate to call us at 1-800-372-2960 on the toll-free hotline, or write the Office of Attorney General, Division of Consumer Protection.


ATTORNEY GENERAL ROBERT F. STEPHENS

WHAT IS THE SMALL CLAIMS DIVISION?

The Small Claims Division of the district court in each Kentucky county settles disputes involving money or personal property valued at \$500 or less. The procedures of the court are very simple and informal so that anyone can file a claim or defend himself/herself without an attorney. However, you can employ an attorney to handle your case if you want.

In the Small Claims Division, the two parties involved in the dispute go to court at the designated time, and tell their sides of the disagreement to the Judge. The Judge listens to each side and then makes a decision based on the law governing the facts presented. No juries are used in the Small Claims Division.

WHO CAN USE THE SMALL CLAIMS PROCEDURE?

Any person or business organization with a claim for money or personal property of \$500 or less may use the Small Claims Division EXCEPT:

- (1) a person or organization in the business of lending money at interest, or
- (2) a collection agency or a collection agent, or
- (3) a person or organization with an assigned claim.

A parent or legal guardian must appear in the Small Claims Division on behalf of a person under eighteen (18) years of age or a mental incompetent.

To prevent misuse of the Small Claims Division, no one can file more than twenty-five (25) claims in any one calendar year in the Division of any district court. Any business engaged in trade or commerce is entitled to the maximum number of claims allowed for each established location in the district if that business has been engaged in trade or commerce for at least six (6) months. Those claims above the maximum number of twenty-five (25) will be dismissed by the Judge.

WHAT KINDS OF CLAIMS CAN BE FILED IN SMALL CLAIMS DIVISION?

You can use the Small Claims Division if you are involved in a dispute over money or personal property valued at \$500 or less. A typical dispute might include the following:

- Someone owes money to you and won't pay.
- You worked for someone but have not received the full amount of pay agreed.
- You have recently purchased a new appliance under warranty from a business, but it breaks down and the business refuses to replace it.
- Someone has carelessly damaged something you own and refuses to fix it or pay for the loss or damage.
- Goods shipped to your business are damaged or destroyed in transit and the trucking company refuses to reimburse you for the loss.

- You have paid a security deposit on an apartment and have not damaged the apartment in any way, but the landlord refuses to return your deposit when you leave.
- Someone is in possession of your personal property and wrongfully refuses to return it to you.

There are certainly many other situations that could bring you into Small Claims Division. If you find yourself in a situation in which you feel that you are being wronged, and the claim involves \$500 or less, this Court should be available to you.

Certain kinds of claims, however, are not allowed in the Small Claims Division. Criminal actions or cases for libel, slander, alienation of affections, malicious prosecution and abuse of process must be brought in another court.

WHEN SHOULD YOU USE THE SMALL CLAIMS DIVISION?

Before filing a suit in Small Claims Division, contact the other person or business organization and try to settle your dispute. Frequently, problems are caused by a breakdown in communication or a misunderstanding that can be resolved by some means other than suing in court. A settlement out of court will save you both time and money.

If a settlement is reached, put all the terms of your agreement in writing, and have it signed by both you and the other party. If no

settlement can be reached and you still believe that you have been wronged by the other party, you should then file a suit in the Small Claims Division.

It is very important that you file your suit immediately after you realize that no settlement can be reached. The law sets a specific time period (Statutes of Limitation) in which a person having a claim must file the suit in order to have the hearing. After this period is up, the person is prohibited from bringing the suit. These Statutes of Limitation vary with the type of claim you are making. For example, claims about oral contracts must be brought within five years from the time the contract was made. Written contracts have a fifteen year Statute of Limitations, and some personal injury claims have a one year Statute of Limitations. If you are in doubt about whether you are bringing your claim within the proper time, you may want to go ahead and file your suit. However, if your suit is late, the Judge will then dismiss the claim and you will lose your \$10 filing fee.

WHAT SHOULD YOU KNOW BEFORE FILING YOUR CLAIM?

1. LEGAL TERMS AND PROCEDURE

— Generally, there are two parties to a lawsuit — the *Plaintiff* and the *Defendant*. The person or business who starts the lawsuit is called the *Plaintiff*. The party being sued is called the *Defendant*. A lawsuit begins when the Plaintiff files a legal paper called a *Complaint* with the Circuit Court Clerk, telling the court about the disagreement. The Clerk will

send a copy of the Complaint by certified or registered mail to the Defendant to notify him/her about the lawsuit. The procedure is called *Service of Process*. If the Clerk is unable to reach the Defendant by certified or registered mail, then it will be necessary for the Sheriff's office to personally deliver a copy of your claim to the Defendant. The Plaintiff must check with the Clerk within ten (10) days after the lawsuit is filed to make sure that the Defendant has received notice of the lawsuit.

- 2. YOUR CLAIM**—The maximum amount of money for which you can sue is \$500. Even if your claim is for more than \$500, you can choose to sue for only \$500, rather than go through a trial in another court. The amount of your claim should include both the actual amount of damage due and any extra expenses you paid because of the damage. For example, if a mechanic charged you \$100 for repairs he did incorrectly and you had to have the work done over for \$100, then you may want to sue for \$200. Remember that you must be able to prove the amount of damages that you are suing for.
- 3. EVIDENCE AND WITNESSES** — Your case will be stronger if you can bring to court any evidence or witnesses that will help prove your case. Such evidence may include contracts, letters, paid bills, receipts, cancelled checks, leases, estimates, photographs, or the actual damaged goods. Before you file your claim, check to see if

you have any such evidence that will support your case. Save any evidence so you can use it at the hearing. You may also bring witnesses to testify for you.

HOW DO YOU FILE A CLAIM IN THE SMALL CLAIMS DIVISION?

Follow these steps to file a claim in the Small Claims Division:

1. Go to the office of the Circuit Court Clerk in the county where the *Defendant* or his/her representative lives or does business. This means that you, the Plaintiff, can only sue in the Small Claims Division of your own county if the Defendant or his/her representative lives or does business in that same county or if the dispute arose from a sale made in your home.
2. Tell the Circuit Court Clerk that you wish to file a small claim and you will be given a simple form (the Complaint) to fill out. You will need to provide the following information:
 - (a) Your name and address, and the Defendant's name and address;
 - (b) A short, simple statement telling why you are suing;
 - (c) The amount of money you are suing for.
3. The Clerk will assign your case a number, and set a date and time for the hearing before the Judge. This hearing will take place three to six weeks after the Clerk notifies the Defendant of your suit.

4. The Clerk will send a copy of your claim to the Defendant by certified or registered mail to notify him/her of your lawsuit. If the Clerk is unable to reach the Defendant by mail, then you must have the sheriff's office personally deliver a copy of your claim to the Defendant. *It is the Plaintiff's responsibility to check with the Clerk within ten (10) days after the claim is filed to see if the Defendant has received notice of the lawsuit by mail.* If the Defendant did not receive the notice, then the Plaintiff must go to the Sheriff's office and ask him/her to serve the Defendant with these legal papers.

HOW MUCH DO YOU HAVE TO PAY TO FILE A SMALL CLAIM LAWSUIT?

At the time you file your claim with the Clerk, you will be charged a filing fee of \$10. This does not include the cost of sending a copy of your claim to the Defendant by certified mail. If the Defendant cannot be served by mail and the sheriff must personally serve the Defendant, you will also be charged for the sheriff's fee and mileage cost.

Remember: If you win your Small Claims case, you have the right to charge the Defendant for these "court costs" (the filing fee, service of process charges) to bring your case before the Judge. You must ask the Judge to award you these "court costs" *in addition* to the amount you receive by the court for your claim.

WHAT DO YOU DO IF YOU HAVE BEEN SUED IN SMALL CLAIMS DIVISION?

If you receive a notice from the Circuit Court Clerk or Sheriff's office saying there is a claim against you, then you are being sued. The notice will tell you the person who is suing you (the Plaintiff's name and address), the type and amount of the claim filed against you, and the time and date of the hearing.

When you are sued in the Small Claims Division, several options are available to you:

- (1) Default — If you fail to appear in court on the hearing date, the Plaintiff can present his/her side of the story without you and may receive a *Judgment* against you that is legally enforceable. A Judgment is a court order which will require you to pay the stated amount. Therefore, *never, never*, fail to go to the scheduled hearing unless you have made previous arrangements for a Continuance (postponement) with the Court.
- (2) Settle — Even after the suit has been started, you and the Plaintiff can still come to an agreement on your own. Be sure to put the agreement in writing signed by both parties. (See the appendix for a sample). On the day and time set for the hearing, go to Court and give the Judge the signed settlement form. The Judge will sign the agreement and then both parties will be required by law to obey it.
- (3) Removal to Another Court — If you wish to have a jury trial *and* the claim

250

is more than \$200, you must give notice to the Circuit Court Clerk at least seven days before the hearing date. In such a case, the claim will be removed to the district court for a jury trial. However, you will be charged at \$12.50 fee for removing the case to the district court. The regular docket of the district court uses a more formal procedure than the Small Claims Division and may take longer to hear the case. You may also need to hire an attorney to argue your case before the jury.

- (4) Continuance — If you want to fight the claim made against you, but cannot appear on the date set for your hearing, you *must* contact the Court and explain your reason. If the Court accepts your excuse, it may allow a Continuance (postponement) until a future date. The decision to grant a postponement, however, is within the complete discretion of the Judge. If you do want a Continuance, do not wait until the hearing date and ask for one. Your request should be made as soon as you realize you cannot appear at the scheduled hearing. Since one object of the Small Claims Division is to promote quick settlement of claims, continuances will not be granted unless fairness or justice so requires.

WHAT SHOULD YOU DO TO PREPARE FOR A SMALL CLAIMS HEARING?

Small Claims Division procedure encourages

persons to present their own cases without an attorney. To prepare for your appearance at the hearing, there are several simple measures you can take to strengthen your position and keep the court procedure running smoothly:

- (1) Evidence — Gather all papers, documents, and materials (such as contracts, letters, paid bills, receipts, cancelled checks, leases, estimates, photographs, or the actual damaged goods) which you feel are needed to present your side of the story to the Judge, and bring them to the hearing.
- (2) Witnesses — Anyone who may be aware of facts which can help you prove your case should be contacted and asked to appear at your hearing. If a witness who may be essential to your case refuses to come, a *subpoena* may be issued by the Circuit Court Clerk ordering the witness to appear. If you subpoena a witness, you should notify the Circuit Court Clerk at least a week before the hearing and give the name and address of the witness you need so that the Clerk can fill out the proper forms and notify the witness.
- (3) Facts of Your Case — It is very important to know the facts of your case and to have them organized in your own mind before you appear in Court. Write down the facts and details of your case. This will help you in telling your side of the story during the trial. Outline what you expect to cover with each witness, perhaps even listing

questions you want to ask each witness. Try to anticipate what the "other side" will do or say and be prepared to refute it.

- (4) Visit the Court — It may be helpful to visit the Court and watch a hearing before your own hearing date. In this way you will become familiar with the way the Court works.
- (5) Service on the Defendant — Remember that if you are the *Plaintiff*, you must check with the Circuit Court Clerk no more than ten (10) days after you filed your claim to find out if the Defendant has received notice of the lawsuit. If the Defendant has not received notice by certified mail, the Sheriff can then try to serve the notice personally. However, if the Defendant has not received notice of the claim, your case cannot be heard.
- (6) Counterclaim — If you think you have a valid claim against the party suing you, and your claim arose out of the same dispute involved in the Plaintiff's suit, you may wish to file a *Counterclaim* (a suit in reverse against the party suing you). For example, if an auto repair shop is suing you for a \$300 bill for installing a new transmission, you might want to counter-claim for the \$400 it cost you to have the installation redone somewhere else. To file a counterclaim, you must follow essentially the same steps you

would take to file a Complaint. First, go to the office of the Circuit Court Clerk in the county where the original claim was filed at least one week before the hearing date. Tell the Clerk you wish to file a Counterclaim, and forms will be provided for you to complete. (Your Counterclaim *cannot* exceed \$500 if your claim is to be heard in Small Claims Division.) The Clerk will notify the Plaintiff of the Counterclaim no later than two days before the hearing. At the scheduled hearing, both the Plaintiff's claim and the Defendant's Counterclaim will be heard by the Judge at the same time.

WHAT HAPPENS AT THE TRIAL?

On the day set for your hearing, go to the courtroom in advance of the time for your case. Have the evidence and witnesses you need to prove your case with you.

When your case is called by the court officer, approach the front of the courtroom and tell the Judge that you are present. The Judge will then swear in both parties by asking them if they will tell the truth about the disagreement. The Plaintiff will tell his/her side of the story. The Judge may ask questions so that he/she understands your claim or defense better. At the time you present your side of the story, you may also call any witnesses or present any evidence to the Judge in support of your story. Each party can also question the other party or his/her witnesses.

Remember that the hearing is informal. Try

to keep your story as short as possible without neglecting the important facts. The Judge is concerned only with the facts relevant to the case. He/she is the sole person who will decide the case and is the only person you will have to convince.

If you are the Plaintiff and the Defendant does not show up for the hearing (Defaults), you must still show the Court proof of your claim to win a Judgment.

If you are the Defendant and the Plaintiff does not show up for the hearing, the case may be dismissed, or the Court may award your Counterclaim if you can prove your claim.

When the Judge has heard both sides, he/she will make a decision based on the facts and will enter a Judgment, stating who won, how much is to be paid, and how it is to be paid. If the Plaintiff wins, he/she may be awarded the costs for filing fees which were paid ("court costs").

If the Defendant has filed a Counterclaim, the Court will hear both claims together and may set off (subtract) one claim from the other in reaching a final award. For example, if the Plaintiff sues the Defendant for \$400 for failure to fix his car and Defendant files a Counterclaim suing the Plaintiff for \$200 worth of repairs made to the car, the Judge may subtract the \$200 Counterclaim from the Plaintiff's \$400 claim, and award the Plaintiff only \$200. Of course, both parties are required to prove the validity of their claims before the Judge.

If the Plaintiff and Defendant reach a settle-

ment before the trial, they should sign a settlement form and present it to the Judge at the time set for their hearing. The Judge will review the agreement, and if it is approved, sign the form and enter it as a Judgment of the Court. Once the settlement is signed by the Judge, it becomes a legally enforceable agreement. The Clerk can provide you with a settlement form upon request.

HOW DO YOU GET MONEY IF YOU WIN?

Once you have obtained a Judgment or an award, it is a legally enforceable Court order entitling you to receive the money owed to you. If you are the party being sued, you should come to the hearing prepared to pay the other person if you lose. When the Judge decides the case, the losing party should immediately pay the winning party the money owed, or arrange to fix the damaged goods as the Judge orders.

If one of the parties does not appear at the hearing, the Circuit Court Clerk will notify the losing party of the judgment awarded against him/her. As soon as the losing party is notified, the amount of the claim plus the Court costs must be paid to the winning party. Failure to pay the Judgment ordered by the Court can result in your wages being garnished or your property being taken by the Sheriff and sold at public sale.

If the losing party refuses to pay the amount ordered by the Court, there are several legal methods of collecting the Judgment. For example, you can take the losing party's wages from his/her employer (garnishment), or re-

possess the goods that were not paid for, or you could have the Sheriff take the losing party's property and sell it to pay the amount of the Judgment. The Circuit Court Clerk can provide you with the necessary forms to make a legal collection. It is your responsibility to collect the Judgment and to follow these steps very carefully to stay within the law. If you have difficulty following these steps, you can consult an attorney or call the Consumer Protection Division of the Attorney General's Office for assistance.

WHAT CAN YOU DO IF YOU DISAGREE WITH THE COURT JUDGMENT?

If you disagree with the decision of the Small Claims Division, you have the right to appeal the judgment against you to the Circuit Court. Your appeal must be filed with the Circuit Court Clerk within ten days from the date of the entry of the Small Claims Judgment. At the time of the filing of the appeal you will be charged a \$45.00 fee to cover Circuit Court costs. It may also be necessary to hire an attorney to process your appeal. If you file and lose on appeal, you will still be responsible for the amount of the original Small Claims Judgment in addition to the court costs of the appeal.

On appeal, the Circuit Court Judge will review the decision of the Small Claims Division Judge. In most cases, the original findings of facts will not be changed. The Judgment will only be altered if the law was applied incorrectly to the facts as they were presented.

SUMMARY CHECKLIST

1. Have you been involved in a dispute that can be decided in Small Claims Court? (p. 3)
2. Have you tried to first settle your dispute out of court? (p. 4)
3. Is your claim under the \$500 maximum amount? (p. 4)
4. Do you know the correct name and address of the Defendant? (p. 7)
5. Are you prepared to act as your own attorney? (p. 10)
6. Have you filed no more than twenty-five (25) claims during the year? (p. 3)
7. Do you understand you give up your right to a jury trial in this case when you file a claim in the Small Claims Division? (p. 2)
(See also the Complaint form waiver on side 2)
8. Have you filed your claim in the Small Claims Division in the county where the Defendant lives or does business? (p. 7)
9. Do you know when and where your hearing will be held? (p. 7)
10. If, after you filed your claim, the Defendant agrees to settle out of court, have you put the terms of the agreement in writing and had both parties sign it so it can be presented to the Judge on the day of the hearing? (pp. 9, 14)
11. Did you contact the Circuit Court Clerk to see if the defendant received notice of the claim? (pp. 8, 12)

12. If you are the Defendant and wish to file a Counterclaim, have you notified the Clerk of your Counterclaim at least one week before the hearing? (p. 12)
13. Have you collected all evidence and witnesses to support your case? (pp. 6, 11)
14. Have you arranged the facts of your case so that you can tell your story briefly, clearly, and unemotionally? (p. 11)
15. If you cannot appear at the specified date, have you requested a Continuance from the Court? (p. 10)
16. If possible, have you visited a Small Claims Division hearing to familiarize yourself with the procedure prior to your hearing? (p. 12)
17. Have you attempted to collect the judgment from the losing party? (p. 15)

AOC-77-101

Commonwealth of Kentucky
Court of Justice



Case No.

SMALL CLAIMS COMPLAINT

In the Small Claims Division of _____ District Court

Plaintiff _____ Attorney _____
Address _____ (If Any) _____

Defendant _____ Attorney _____
Address _____ (If Any) _____

NOTICE TO EACH DEFENDANT — READ CAREFULLY

You are being sued in the Small Claims Division of District Court by the Plaintiff(s) shown above. The judge has not made any decision in this case. You are to appear in the court on the date shown on the attached summons to tell your side of the dispute.

However, if you fail to appear in court on the date shown on the attached summons a court judgement can be taken against you for the money or property demanded in the following complaint. This could lead to garnishment of your pay check and/or sale of your home or other belongings (unless protected by law) to satisfy that judgement.

If you have questions or need assistance, consult the Small Claims Information pamphlet or call an attorney.

Complaint

1. Plaintiff claims that the defendant _____

2. Plaintiff claims the following sum from the defendant for damages brought by the above complaint _____
3. Plaintiff also claims court cost.

Clerk _____ Plaintiff's Signature or Attorney _____
Address _____

Phone number _____ Date of Filing _____

(See Reverse)

Small Claims Affidavit

KRS 24A.250

- (1) "No party shall file more than twenty-five claims in any one calendar year in the Small Claims Division of any district court in the Commonwealth. Any business engaged in trade or commerce shall be entitled to the maximum number of claims allowed under this section of this Act for each established location in this district that has been engaged in trade or commerce for at least six months."

I affirm that I have not brought more than the maximum number of claims allowed under KRS 24A.250(7).

(Name and Date)

WARNING

KRS 24A.320

"All claims in the Small Claims Division shall be tried without jury. Upon filing a claim, the plaintiff shall be deemed to have waived his right to a jury trial in the Division."

SMALL CLAIMS DIVISION
JUDICIAL DISTRICT

CASE NUMBER _____

PLAINTIFF

(name) _____

v.

SETTLEMENT AGREEMENT

DEFENDANT

(name) _____

1. On _____ (date) Plaintiff _____ (name) filed a Complaint with this Court against Defendant _____ (name).
2. The parties have now resolved the controversy stated in that Complaint, and have agreed to the following:

(statement of agreed facts and resolution of the problem)

I am the Plaintiff in this case and have read this Settlement Agreement and consent to its terms.

PLAINTIFF

County of _____
Commonwealth of Kentucky

Subscribed and sworn before me this _____ day of _____ 197____.

NOTARY PUBLIC

My commission expires: _____

I am the Defendant in this case and have read this Settlement Agreement and consent to its terms.

DEFENDANT

County of _____
Commonwealth of Kentucky

Subscribed and sworn before me this _____ day of _____, 197____.

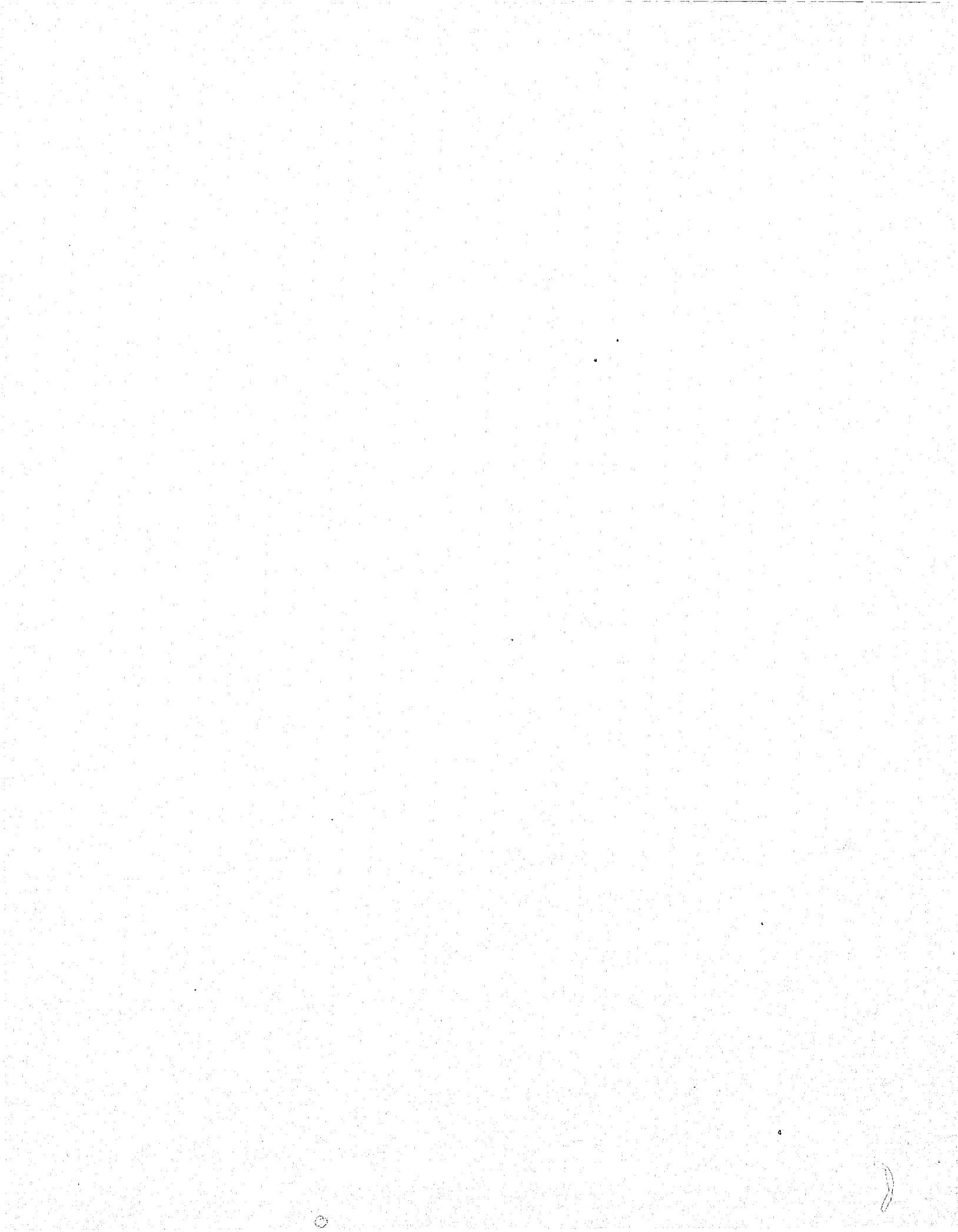
NOTARY PUBLIC

My commission expires: _____

WHEREFORE, the parties have agreed to resolve the differences alleged in the Complaint filed with this Court on _____, it is hereby ADJUDGED and ORDERED that the above SETTLEMENT AGREEMENT be entered as a Judgment and Order of this Court.

This the _____ day of _____, 197____.

JUDGE



END