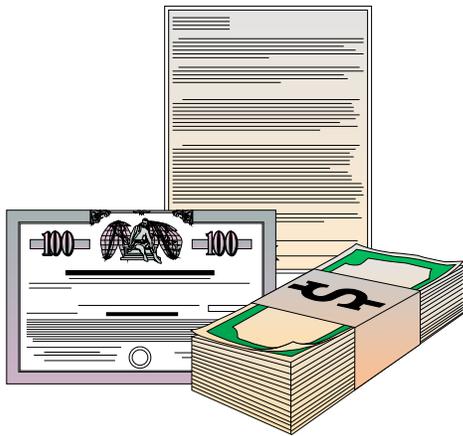


# SMALL CLAIMS COURT: A USER'S GUIDE

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*Resolve your dispute without having to hire an attorney*



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# SMALL CLAIMS COURT: A USER'S GUIDE

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## Introduction

If you have a dispute with someone that involves \$3,000.00 or less you may want to consider pursuing your claim in the Small Claims Court. This is an informal Court similar to the People's Court. It is a special civil division of the district court where individuals and/or businesses can settle disputes without the use of an attorney. The procedures are simple, informal, inexpensive and there is no jury involved. The focus of this guide is to help you file your claim and present your case in the Small Claims Court of Mobile County. A portion of the material contained herein is from the Mobile County Small Claims Court web site and the Alabama Administrative Office of Courts web site. ***The material in this handbook is provided free and as a courtesy.*** The reader is reminded that the law is dynamic and subject to change. Also, fees and procedures are subject to change. For more details about small claims court visit: <http://13jc.alacourt.gov/smFaq.html> NOTE: While this material is specific to and references the Small Claims Court of Mobile County, Alabama most of the forms and suggestions are applicable to any Small Claims Court in Alabama. For more specifics about a Small Claims Court in another County or jurisdiction, type in Small Claims Court and the County and State to any of the major internet search engines and you should be able to find similar information for a Small Claims Court in your area or region.

The other thing to consider is whether it will be beneficial to file a lawsuit in Small Claims Court. Before you file a claim, you should contact the person or business you plan to sue and attempt to settle your dispute. This effort may save you time and money. In some instances, it costs as much or more than the actual claim to file and seek collections. You should also find out if the person or business you plan to sue has any money or assets to pay your claims, if you should win. Otherwise, you may have a difficult time collecting on a court judgment. Remember, it is up to you, not the court, to take further legal action against the person or business if they do not pay the judgment. This process can be handled through the mail; you only have to come to the courthouse when or if the case is set for a hearing.

Even if you do not think the other side will agree to work out the dispute, you should send a letter or e-mail to the party full setting out the facts and why you think they should pay or reimburse you. Make sure you date the communication and keep a copy for yourself. You can then use this letter as an outline of your case when it goes to trial.

If you can not work out the dispute then you may want to pursue the matter in Small Claims Court. To use Small Claims Court, you must be an individual who has reached the age of 19. A partnership, or a corporation may also file a claim, with or without an attorney. If a partnership files without an attorney, the person representing the partnership must be a partner or employee of the partnership. If a corporation files without an attorney, the person representing the corporation must be an officer or full-time employee of the corporation.

## Getting The Case Started

The Clerk's office for the Small Claims Court is on the third floor of the judicial building at the Mobile Government Plaza located at 200 Government Street in downtown Mobile. Inform one of the clerks of your intent to file a claim in the Small Claims Court and he or she will provide you with a form to be filled out, called a Statement of Claim. On the claim statement you will need to fill in the name of the individual or business that owes you money and you will need to provide a brief explanation as to why you claim the money is owed to you. **When filling out the claim statement you will need the address for the person or business that owes you money.** This is very important because your claim can not be served on the other party without an address. A work address for an individual may be acceptable if you can specify the work hours of the person to be served.

After you complete your claim form you can turn it into the clerk and pay your filing fee. The amount of the filing fee depends on how much money you are seeking to recover and how many people or businesses you contend owe you that money. The filing fee is usually between \$46.00 and \$120.00. If you cannot afford the filing fee you can complete an Affidavit of Substantial Hardship [http://13jc.alacourt.gov/forms/UJS\\_Form\\_C\\_10.pdf](http://13jc.alacourt.gov/forms/UJS_Form_C_10.pdf) and a Judge will determine whether the filing fee can be waived or suspended. Once you turn in your claim form and pay the filing fee your case will be given a case number. You should use this number whenever you contact the Court about your case.

When your case is filed with the Court you are known as the Plaintiff and the other party is the Defendant. Even though your case has been filed it does not become active until your Statement of Claim is formally and legally presented to the Defendant. This is known as service of the lawsuit and it is done by the Sheriff's Department. (This is why you need the Defendant's address when filing your claim.) Or for an additional fee, your lawsuit can be served on the Defendant by Certified Mail. When the Defendant is served with your claim he or she will also be provided with a form called "Defendant's Answer". The Defendant has 14 days to file an Answer after being served with your Statement of Claim. If the Defendant fails to file an Answer to the Complaint within 14 days of service then you may ask the Court to enter a Default Judgment in your favor. The forms for requesting a default judgment are available at the Clerk's office.

If the Defendant files an answer and denies the allegations of your claim, in whole or in part, then the Court will notify you of a date and time for your trial. The Courtrooms for Small Claims cases are on the 4<sup>th</sup> floor of the judicial building in the Mobile Government Plaza. Your trial notice will also indicate the Courtroom number where your case will be heard. At that time you will have an opportunity to present your case to the Judge.

If you lose your case, you can appeal for a new trial in Circuit Court within 14 days of the judgment. The party filing the appeal must be prepared to pay a filing fee of \$215.00 for a non-jury trial or \$315.00 for a jury trial and post a bond to cover any unpaid court costs. You may need the assistance of an attorney if you choose to appeal because the simplified procedures of Small Claims court do not apply in Circuit Court.

If you win and the other side does not appeal, it is up to you to collect on the judgment. See writ of execution and/or garnishment forms in the FORMS section.

## Tips for Effectively Presenting Your Case in Small Claims Court

When preparing for trial you should get together all papers, receipts, bills, sale tickets, estimates, photographs, etc. related to your claim. You should also write down important facts and details of the case to assist you in telling why the Defendant owes you money. This is important because at trial you may be nervous and forget to tell the Judge an important fact or detail about your case. If you have an outline or notes you can use that to make sure the Judge knows all the facts needed for resolution of your claim. You can also bring witnesses to testify. If your case centers around an oral agreement and is not supported by a written agreement, you may want to bring witnesses who heard the oral agreement to Court so that they can verify the agreement. If you think a witness will not voluntarily appear, you can ask the Court to issue a subpoena requiring the witness to be present for trial. If you want a subpoena issued you will need to let the Clerk know at least **two weeks** before trial and you will need to pay an issuance fee of around \$10.00.

On the day of your trial it is very important that you are on time! If for some reason you are running late or have an emergency on the day of trial, notify the court as soon as possible so that they may pass the information onto the Judge and other party. If you fail to show-up for your trial the Judge can dismiss your case. If you know in advance that you will not be able to be in Court on your trial date, you should notify the Clerk and discuss the procedure for re-scheduling your trial date. It probably would be best to write the Clerk to ask for a continuance and send a copy of your request to the other party.

The trial of a case in Small Claims court is an informal hearing before the Judge, there is no jury. When the case is called for trial the parties will present themselves before the Court. The Judge will have all the parties and witnesses take an oath to testify truthfully and then the case will begin. The Plaintiff goes first and presents his or her evidence and calls any necessary witnesses. If you have a written statement from someone that you wish to present to the Judge, make sure the statement has been signed and notarized. Once the Plaintiff has finished, the Defendant will then be allowed to present his or her evidence and call witnesses. In any civil lawsuit the plaintiff carries the burden of proof. **This means you must present evidence that is more credible than the evidence presented by the Defendant.** The use of photographs and diagrams is allowed and may be very helpful in presenting your case. Also, when telling the Judge about your case identify people by name. Do not argue with the Defendant or witnesses. If the Defendant testifies, you have the right to ask him or her questions when they have finished. This is known as cross-examination. Many times the judge will not allow cross examination in Small Claims Court. This is because many times people find it difficult to ask questions without commenting or debating the witness' answer. When presenting your case, you have to present only evidence that is related to the allegations in the Statement of Claim.

After hearing the evidence from both sides, the Judge will make a decision. In many cases the Judge will take the case under submission and make a decision after reviewing the facts and the applicable law. If the Judge takes the case under submission, you will be notified by mail of the decision. If either party is not satisfied with the Judges ruling an appeal can be filed to the Circuit Court. This must be done within 14 days of the decision and you must pay an Appeal fee equal to the Circuit Court filing fee. This amount is about \$150.00. The clerk's office has a Notice of Appeal form. If after 14 days neither side filed an Appeal, then the judgment becomes final.

If the Judge has awarded you money the Defendant should pay the judgement amount into Court plus costs. (Assuming an Appeal has not been filed.) If the Defendant does not pay the Judgment then it is up to you, not the Court, to try and collect on that judgment. There are two ways to collect a judgement. The first is known as Execution on the Judgment. This requires a Court order authorizing the Sheriff to take property of the Defendant and sell it to satisfy the judgment amount. The other method to collect on a judgment is know as Garnishment. This requires a Court order instructing the Defendant's employer to withhold a certain amount of the Defendant's wages each pay period and send that money to court. Both these collection methods require additional filing fees and forms can be obtained form the clerk's office.

Remember, while the clerk's office can provide you with the various forms for your case, they can not provide you with any legal advice.

### Ten Pointers to Remember:

1. Be on time.
2. Be organized: Have your presentation ready and your exhibits or diagrams available.
3. Practice your presentation.
4. Dress appropriately.
5. Behave appropriately. Be courteous to the Judge and Court personnel as well as the other party.
6. Have your favorable witnesses in Court with you. If a witness can not be present at trial, at least bring an sworn statement from them. The Judge may or may not allow the sworn statement into evidence but at least you'll have something that indicates you have a favorable witness.
7. Do not interrupt the Judge or the other party. Court proceedings have a protocol and procedure. The Judge will let you know when it is your time to speak.
8. Listen to the other Parties argument closely and be prepared to offer counter-points or responses when it is your turn to speak.
9. Think before you speak! Nothing will get under the Judge's skin more than outrageous and emotional commentary. Before you call your opponent a "lying, good for nothin', sorry rotten SOB!" take a deep breath and resist the urge.
10. Be reasonable in your assessment of the situation. If you opponent has made a good point on a minor issue or fact, don't be afraid to admit it.

## Fee Chart for Mobile County Small Claims Court (As of August 29, 2010)

<b><u>Fee Description</u></b>	<b><u>Claim Amount</u></b>	<b><u>Fee at Filing</u></b>
Filing Fee (One Defendant)	Up to \$1,500.00	\$46.00
Filing Fee (One Defendant)	\$1,501.00 up to \$3,000.00	\$120.00
<b><u>Additional Service Fees</u></b>	<b><u>Claim Amount</u></b>	<b><u>Fee</u></b>
Additional Defendant	Any Amount	\$10.00 per additional defendant
Additional Plaintiffs	Any Amount	\$50.00 (\$500 max)
Garnishment	Any Amount	\$30.00
Execution	Any Amount	\$30.00
Certified Mail	Any Amount	\$10.00
Subpoenas	Any Amount	\$12.00 per subpoena

## Forms

Note the links to the forms below will allow you to complete and print the necessary paperwork to be filed with the Small Claims Court.

### Summons

<http://madisoncountycircuitclerk.org/SM-7X%20Rev607.pdf>

### Complaint for Money

[http://13jc.alacourt.gov/forms/SM\\_01.pdf](http://13jc.alacourt.gov/forms/SM_01.pdf)

### Complaint for Specific Property

[http://13jc.alacourt.gov/forms/SM\\_02.pdf](http://13jc.alacourt.gov/forms/SM_02.pdf)

### Defendant's Answer

[http://13jc.alacourt.gov/forms/SM\\_03.pdf](http://13jc.alacourt.gov/forms/SM_03.pdf)

### Defendant's Answer with Counterclaim

[http://13jc.alacourt.gov/forms/SM\\_06.pdf](http://13jc.alacourt.gov/forms/SM_06.pdf)

### Default Judgement Application

[http://eforms.alacourt.gov/getajsform.aspx?FormNo=c-25\(a\)](http://eforms.alacourt.gov/getajsform.aspx?FormNo=c-25(a))

### Request for Witness to Appear (Subpoena)

<http://eforms.alacourt.gov/getajsform.aspx?FormNo=c-12>

### Subpoena

<http://eforms.alacourt.gov/getajsform.aspx?FormNo=c-13>

### Writ of Execution

<http://eforms.alacourt.gov/getajsform.aspx?FormNo=c-20>

### Process of Garnishment

<http://eforms.alacourt.gov/getajsform.aspx?FormNo=c-21>

### Notice of Appeal

[http://13jc.alacourt.gov/forms/C\\_35.pdf](http://13jc.alacourt.gov/forms/C_35.pdf)

## ALABAMA SMALL CLAIMS RULES

### **Rule A.**

#### **Scope of rules.**

These rules govern procedure in cases in the district courts. They are to be known and cited as the "Alabama Small Claims Rules." They shall be construed to secure the just, speedy and inexpensive determination of every case. All small claims court cases shall be conducted in such manner as to do substantial justice between the parties according to the rules of substantive law and, in the administration of these rules, and particularly Rule "N" hereof, the court shall make such accommodation to parties not represented by an attorney as is necessary to serve the ends of justice and the court, in its discretion, may explore claims and/or defenses not raised by the parties. These rules shall not be applicable to actions of unlawful detainer pursuant to Title 6, Chapter 6 or Title 35, Chapter 9, Code of Alabama 1975. Actions of unlawful detainer shall be filed on the regular district court docket and shall be governed by the Alabama Rules of Civil Procedure with district court modifications.

[Amended 9-9-80, eff. 10-9-80.]

#### **Rule B. Definitions.**

"Amendment" means making a change in a complaint, answer or counterclaim.

"Answer" means the paper filed by the party defending against the claim.

"Clerk" means the officer in charge of the court records.

"Complaint" means the paper filed by the party making the claim.

"Counterclaim" means a claim by a defendant against a plaintiff.

"Court" means the judge of the court.

"Default" means failure to defend such as failure to answer or appear for trial.

"Defendant" means the party defending against plaintiff's claim.

"Execution" means enforcement of the judgment.

"Judgment" means the decision of the court on the case.

"Party" means a person or firm that is suing or being sued.

"Plaintiff" means the party beginning a case.

"Subpoena" means an order of the court requiring a witness to attend and to testify at a trial.

"Summons" means the paper issued by the clerk under the seal of the court which orders the defendant to admit or deny plaintiff's claim.

"Working week day" means a day which is not a Saturday, Sunday or legal holiday under state or federal law.

#### **Rule C. Beginning and defending the case.**

*Beginning.* A case shall be begun by filing with the clerk of the court a short and plain written statement showing what plaintiff claims and why he claims it. A plaintiff may combine as many claims as he has against a defendant in one case and he may sue more than one defendant in one case if his claim involves all of the defendants. This statement shall be called a complaint and the forms of complaint [SM1, SM2] appearing in the appendix to these rules shall be sufficient and their use is strongly recommended.

*Defending.* The defendant shall file a short and plain reply showing what defendant admits, what he denies and why he denies it. This reply shall be called an answer, shall be filed within the deadline set forth at Rule "F", and the form of answer appearing in the appendix to these rules shall be sufficient. If a defendant has a claim against a plaintiff, he shall file it with his answer and send a copy of it to the plaintiff. Said claim shall be in the form applicable to a complaint and it shall be called a counterclaim. Failure of a defendant to make a counterclaim which is based upon things

which gave rise to plaintiff's claim will not of itself prevent the defendant from raising such claim in another court or case so long as the defendant either wins his case in the court or prevents the judgment of the court from becoming a final judgment by the filing of a notice of appeal as provided in Rule "M". Answer may not be made by a motion to dismiss. The court shall be very lenient in the allowance of changes or amendments to complaints, answers and counterclaims and continuances of trials when necessary to serve the ends of justice.

#### **Rule D.**

##### **Summons.**

Upon the filing of the complaint and a copy with any attachments for each defendant the clerk shall issue a summons to each defendant. The form of summons appearing in the appendix to these rules shall be sufficient. Unless the plaintiff requests service by certified mail pursuant to Rule 4.1(c) of the Rules of Civil Procedure or obtains an order from the court allowing some other person to make service upon a defendant, the summons and a copy of the complaint shall be served upon a resident or in-state defendant by the sheriff, at his election, by either of the following methods:

(a) personal service; or

(b) by placing the summons and a copy of the complaint in an envelope addressed to the person to be served with the return address of the sheriff shown on the envelope, and placing the sealed envelope in the United States mail as certified mail with instructions thereon and instructions to the delivering postal employee to show to whom delivered, date of delivery and address where delivered on the return receipt. When the defendant to be served is a natural person, the sheriff shall also request restricted delivery, unless otherwise ordered by the court. Where the sheriff elects to personally serve a defendant, he shall locate the person to be served and shall deliver the summons and a copy of the

complaint and any accompanying documents to the person to be served. When the summons and a copy of the complaint have been delivered, the sheriff serving process shall endorse that fact on a copy of the summons and return it to the clerk who shall make the appropriate entry on the docket sheet of the action. The return of the sheriff serving process in the manner described herein shall be prima facie evidence of such fact. When the sheriff serving process is unable to personally serve the summons and a copy of the complaint within 30 days, he shall endorse that fact and the reason therefor on the process and return the summons and copy of the complaint to the clerk who shall make the appropriate entry on the docket sheet of the action. In the event of failure of personal service, the clerk shall forthwith notify, by mail, the attorney of record or if there is no attorney of record, the party at whose instance process was issued. He shall enter the fact of notification on the docket sheet of the action. Where the sheriff elects to serve the summons and a copy of the complaint by certified mail, the sheriff shall endorse that fact on a copy of the summons and return it to the clerk who shall make an appropriate entry on the docket sheet of the action. Additionally, the sheriff shall immediately forward the

return receipt when received by him to the clerk who shall enter the date of delivery to a defendant shown on the return receipt on the docket sheet of the action, and the time for answering by a defendant shall run from the date of delivery as evidenced by the return receipt. Where service is by certified mail and the return receipt indicates that delivery was refused by the addressee, the summons and a copy of the complaint and any documents shall be served by the sheriff as provided in (a) of this rule. Where service is by certified mail and the return receipt indicates failure of delivery to the addressee for reasons other than refusal, the sheriff shall return the summons and a copy of the complaint to the clerk who shall forthwith notify, by mail, the attorney of record or if there is no attorney of record, the party at whose instance process was issued. The clerk shall then enter the fact of notification on the docket sheet of the action. In all cases wherein service upon a defendant is by the constable, such service shall be as provided in (a) above. In all cases

wherein the plaintiff files a written request with the clerk for service by certified mail, service of process shall be made by the clerk, who shall follow the procedure as provided in Rule 4.1(c) of the Rules of Civil Procedure for service by certified mail. All service of process outside this state shall be made as provided in Rule 4.2(b) of the Rules of Civil Procedure.

The procedures for publication in Rule 4.3 of the Rules of Civil Procedure shall be followed when service by publication is available.

[Amended effective January 1, 1980.]

#### **Rule E.**

##### **Time.**

All time periods shall be measured by starting to count on the first day after the complaint was served on the defendant or on the first day after the judgment was entered or on the first day after any other event happens which by these rules starts the running of a time period. If the last day is anything other than a working week day, then the last day is not considered to have arrived until the next working week day thereafter has arrived.

#### **Rule G.**

##### **Exchange of information in advance of trial.**

The parties are encouraged to make voluntary exchanges of information before the trial but in no event shall the court require such an exchange.

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#### **Rule H.**

##### **Pre-trial conference.**

The court shall confer with the parties before any trial whenever it appears that such conference might simplify the issues or shorten the hearing or lead to a voluntary exchange of information which might promote a settlement.

#### **Rule I.**

##### **Witnesses.**

Subpoenas requiring a witness to attend and to testify at a trial shall be issued by the clerk on request of a party.

#### **Rule J.**

##### **Trial.**

At least fourteen days before trial, the clerk shall notify the parties of the place and time of the trial using the form in the appendix to these rules. At the trial, parties, whether or not represented by an attorney, shall be permitted to put questions to the other party or witness. The court in its discretion may participate freely in the examination of parties and witnesses, may relax the rules of evidence and may receive sworn written or recorded statements of witnesses or parties not present at the trial.

#### **Rule K.**

##### **Default.**

When a defendant does not answer within the required time or fails to appear when the case is set for trial, the clerk of the court shall enter a default against the defendant. When the amount claimed

is a sum certain, such as a note, the clerk may enter a judgment for the amount claimed. When the amount claimed is not a sum certain such as damage to a car, the court, not the clerk, shall enter the default judgment but the plaintiff must furnish to the court some proof, such as a repair bill, before he can receive such judgment. The court can set aside a default judgment for any reason within 14 days after its entry. A defendant shall not be deemed in default if he has served an appearance in the form of a motion to dismiss.

**Rule L.**

**Enforcement of judgments.**

Enforcement of any final judgment, called "execution," may proceed by any means available by law or rule for the enforcement of judgments in the district courts except as may be otherwise provided in Rule 62(dc) of the Alabama Rules of Civil Procedure.

**Rule M.**

**Appeals.**

A judgment may be appealed to the circuit court by the filing of a notice of appeal in the office of the clerk of the court within fourteen days from the date of the judgment and by furnishing a bond or cash as security for costs incurred in the court, or affidavit of substantial hardship, approved by the court, in place of said bond. Notice of the right to appeal shall be given to the losing party.

**Rule N.**

**Applicability of ARCP**

The Alabama Rules of Civil Procedure as modified for applicability in the district courts shall be applicable to court cases when necessary to serve the ends of justice and when the Alabama Rules of Civil Procedure, as modified, are not inconsistent with these rules.

## At Our Firm

### ***We care about our clients...***

Unlike many national and regional law firms that burden the TV with advertisements and solicitations for personal injury clients, we rely on the recommendation of our services by word of mouth. Every year almost 90% of our new clients come to us from the recommendations of three main groups: 1) Former clients or their families, 2) other lawyers or their support staff, and 3) area healthcare providers or their staff. Even insurance adjusters have recommend our services to their friends and families! Why do so many people recommend our firm for personal injury victims? We believe it comes down to one word... integrity. To us this means effectively communicating with our clients about their legal matter, giving our best effort to each and every client, being approachable and easy to talk with yet always being candid in our assessment, advocating for our client vigorously and most important, treating each client with the respect they deserve.

### ***We're professionals...***

We have helped personal injury victims and their families with their insurance claims and cases since 1987. We are experienced trial attorneys with thousands of hours spent in Court advocating for the rights of our clients. We are members of some of our profession's most prestigious legal societies and organizations. We have taught Continuing Legal Education seminars for our peers. We have had articles published in numerous State and National law journals. We have served in leadership roles for a variety of legal societies and bar organizations.

### ***We care about our community...***

But just as important as our professional accomplishments is our commitment to our community. We have raised and donated over \$50,000.00 to local charities by way of our annual Charity Wine Tasting and charity CLE programs. We have supported numerous charity and civic programs with our financial support and our time. We have served on the Board of Directors or Executive Committee of many civic and charitable causes. We have supported and sponsored many important community activity events in Mobile and on the Gulf Coast.

### ***We not only have a mission statement, we live it...***

Over the last few years more and more law firms have started using "mission statements." Some of these mission statements are pretty catchy and sound promising. Yet there's no substance behind the words. Since 1999, when we first attached a mission statement to our letterhead, we have worked hard every single day to live up to the promise of our mission. We take our commitment seriously.

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