



**KING COUNTY
SMALL CLAIMS COURTS**

A Guide On:

**HOW TO USE THE
SMALL CLAIMS COURTS
and
HOW TO COLLECT
SMALL CLAIMS
JUDGMENTS**



**Young Lawyers Division
King County Bar Association
1200 Fifth Avenue, Suite 600
Seattle, Washington 98101**



This brochure is intended to provide general information and helpful tips for nonlawyers on how to file, prosecute and defend a claim in the Small Claims Departments of the King County District Courts and how to collect a small claims judgment. It is not intended to be legal advice. If you have any questions, you should consult an attorney directly.

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KING COUNTY DISTRICT COURTS

South Division

Kent Courthouse - Civil Filing Area: *Enumclaw, Kent, Auburn, Black Diamond, Maple Valley, Covington, Algona, Pacific, Ravensdale, Hobart, Federal Way, Burien, Des Moines, Normandy Park, Vashon Island, SeaTac, Skyway, Renton, Roxbury, Tukwila*

1210 South Central
Kent, WA 98032
Phone: 206-205-9200

RJC Office:
401 4th Ave. N.
Kent, WA 98032

East Division

Issaquah Courthouse - Civil Filing Area: *Issaquah, Sammamish, High Point, Preston, Fall City, Snoqualmie, North Bend, Cedar Falls, Tokul, Alpentel, Bellevue, Eastgate, Factoria, Mercer Island, Clyde Hill, Beaux Arts, Newcastle, Redmond, Kirkland, Woodinville, Bothell, Duvall, Carnation, Juanita, Skykomish.*

5415 220th Ave. S.E.
Issaquah, WA 98029-6839
Phone: 206-205-9200

Shoreline Courthouse - Civil Filing Area: *Shoreline, Kenmore, Lake Forest Park.*

18050 Meridian Ave. N.
Seattle, WA 98133
Phone: 206-205-9200

West Division

Seattle Courthouse - Civil Filing Area: *Seattle*

King County Courthouse
516 Third Avenue W-576
Seattle, WA 98104
Phone: 206-205-9200



HOW TO USE SMALL CLAIMS COURT

Small Claims Court is a quick, informal and low-cost way to resolve certain disputes. Each of the District Court Divisions has a Small Claims Department. Small Claims Court considers and resolves claims only for money when the claim does not exceed \$4000. The court is designed to be used by nonlawyers. This section provides information and helpful tips on how to file, prosecute and defend against a claim in Small Claims Court.

Disputes Appropriate for Small Claims Court

Who Can Bring a Claim

Any person can file a claim in Small Claims Court if the amount claimed does not exceed \$4000. A corporation, partnership or association also can file a claim in Small Claims Court if represented by a non-lawyer. You can use Small Claims Court only to bring your own claim, and not to bring a claim on behalf of another person.

Types of Claims

Certain types of claims are particularly appropriate to bring in Small Claims Court, such as:

- Someone damaged your car in a traffic accident and has no insurance.

(Generally injuries to a person caused in a traffic accident are not appropriate for Small Claims Court because the medical bills and damages from such an accident usually exceed \$4000. If your claim

is for personal injuries caused in a traffic accident, you should consult an attorney.)

- Someone owes you money but has failed to repay you.
- Someone refuses to pay you wages for work you have done.
- The laundry or dry-cleaners lost or damaged your clothes and refuses to pay you for the clothes.
- Your tenant has failed to pay you rent.
- Someone has damaged your personal property.
- Your landlord refuses to return your damage deposit after you move out.
- Someone sold you defective or bad merchandise and refuses to refund your money.

Claims for Money Only

Small Claims Court only hears cases in which the claim is to recover money in an amount that does not exceed \$4000. Small Claims Court is not able to issue any order requiring someone to do something or not do something, such as a restraining order or an injunction.

No Attorneys Allowed

Small Claims Court is intended to be a court without lawyers. Generally no attorney, legal paraprofessional or any person other than the person bringing the claim, the person against whom the claim is brought,



and their witnesses, can participate in a trial in Small Claims Court. Exceptions can be made, however, if the judge agrees. A corporation that is bringing a claim may not be represented by an attorney or legal paraprofessional either. Instead a non-lawyer representative must bring the claim for the corporation.

Procedures for Filing Against A Corporation

Because many corporations do business under an assumed trade name, you must have the correct name and address of the corporation you wish to sue: i.e. XYZ Co., Inc. (or Ltd.) In order to obtain service on a corporation, you must have the name of the office manager, corporate president, secretary, cashier, managing agent or registered agent and must serve that person. If you do not have this information, you may contact the Secretary of State Office Division of Corporate Records in Olympia at (360) 753-7115 Monday - Friday between 8:00 am and 3:00 pm, or go to www.secstate.wa.gov/corps.

You may file your small claims action in the district court division where the corporation does business, where it 's office is located or where the registered agent is located. (RCW 4.66.040(6)) When completing the Notice of Small Claim, you should list the corporation name and the office address or the name and address of the registered agent.

Alternative Methods to Resolving the Dispute Out of Court

The Parties' Efforts to Resolve the Dispute

Before you decide to file a claim in Small Claims Court, you should try to resolve your dispute with the person or company you feel has harmed you. A telephone call or a registered letter may save you the trouble of going to court. In some situations, you may be able to resolve the matter by complaining to an agency such as the Better Business Bureau or the Washington State Attorney General's Office. Keep a record of your efforts to resolve the dispute and copies of any letters you send or receive.

Mediation

Mediation is a process by which a neutral person helps the parties resolve the dispute out of court. Both parties must agree to mediate and must agree on who will act as the mediator. A number of agencies in King County are willing to serve as private mediators. They can be found in the Yellow Pages under "Attorneys - Mediation." Some of these agencies will serve as mediators without costs, but others charge a fee. You may also contact Dispute Resolution through the District Court and obtain a mediator at no cost. If you think the parties would agree to mediation, you should contact one of these entities to determine the procedures and costs for mediating your dispute.

Deciding Not to Bring a Claim

In some instances, it may make sense simply not to file a claim. Some



considerations that may affect your decision whether or not to pursue a claim in Small Claims Court include:

- Does the person against whom you would bring the claim have enough money to pay you even if you got a judgment?
- Is the amount you would claim so small that it is simply not worth the time and effort to pursue it?
- Do you have the time and patience for the effort necessary to file, prepare and prosecute your claim?
- Does the person against whom you would bring the claim have any possible claims against you?
- Is the person against whom you would bring the claim a close relative, neighbor or friend?
- Do you feel confident enough to prosecute your claim by yourself without an attorney?

You should carefully weigh each of these considerations before filing your claim.

Where and How to Bring Your Claim

Who to Bring the Claim Against

You must determine whether you are bringing a claim against a person or a corporation. A corporation will usually have the abbreviation “Co.,” “Inc.” or “Corp.” after its name. A person who works for a corporation may have done something wrong to you, but you may want to bring a claim against the corporation, the person or both. Make sure you have the correct name of the

person or corporation, and the correct street address where the person lives or the corporation is located. Giving an incorrect name and address may delay your case.

Which Court to File In

The claim must be filed at the district court in the district where the party against whom you are bringing the claim lives. If you are bringing a claim against a corporation, you can have the case heard in the district where the corporation is located. If the case involves a traffic accident, the claim must be filed in the district where the accident occurred. A list of the King County District Courts showing their addresses and telephone numbers is in the front of this brochure. If you do not know in which district you should file your claim, you can call the Court Administrator’s Office at 206-205-9200. They can tell you in which district a particular address is located. See RCW 3.66.040 for more information.

Notice of Small Claim Form

To file a claim in the Small Claims Court, you must complete a “Notice of Small Claim” form. A sample of the Form is attached as Exhibit 1. You may obtain the Form from any King County District Courthouse. It is also available in PDF form at www.courts.wa/newsinfo, under Informational Brochures. The Form may be filled out at the district court or may be filed by mail. If filing by mail, all four copies of the completed ‘Notice of Small Claim’ should be returned to the court with your check or money order and a large self-addressed, stamped envelope with 55 cents postage (or two stamps). Upon receipt of the form and your check or money order, the clerk will assign a case number and trial date and will use the envelope you provide to send you two copies of the ‘Notice of Small



Claims' with the case number and trial date added- one copy for you and one for the defendant. The information that you need to complete the notice is:

- Your name, complete and correct address and telephone number. The person filing the claim is called the *Plaintiff*.
- The name and complete residence address and telephone number of the person or location of the corporation you are bringing the claim against. The person or corporation against whom the claim is brought is called the *Defendant*.
- If the claim is for damage caused in a traffic accident you also should give the date of the accident and the location where the accident occurred.
- On the claim portion of the form, you need to state the amount of the claim in dollars which cannot exceed \$4000.

Fee for Filing the Claim

At the time you complete and file the Notice of Small Claim Form in the Small Claims Court, in person or by mail, you must pay a \$25.00 filing fee. If you win, this fee, which is part of the costs to bring the claim, is added to the judgment so that you can recover it from the defendant.

Notice of the Hearing

The district court clerk completes the trial date portion of the Notice of Small Claim form. That portion of the Form directs the defendant to appear in person in the Small Claims Court at the assigned date and time. It also advises the defendant that if he or she fails to appear at the time of the trial, judgment may be entered for the full amount

claimed plus costs. The clerk will then hand you two copies of the Notice of Small Claim form. The first is for your records to remind you and your witnesses of the trial date. The second copy is for the defendant.

How to Notify the Defendant of the Claim

Serving the Defendant

You must notify the defendant of the claim and the trial date by having the defendant's copy of the Notice of Small Claim Form delivered to him or her. You are not permitted to deliver these papers to the defendant yourself. There are four ways to notify the defendant:

- **Service by the Sheriff:** The King County Sheriff's Office will deliver a copy of the Notice of Small Claim Form to the defendant. To arrange for service by the Sheriff's Office call 296-3800. There is a charge for the Sheriff's Office to deliver the notice, and rates will vary. (Contact the Sheriff's Office for current rates). If you win, the cost for delivering the notice to the defendant will be added to the judgment.
- **Service by Professional Process Server:** You can hire a process server to deliver the notice to the defendant. Again, the process server charges a fee for this service, but it is usually around \$35 - \$40. A list of professional process servers in King County can be found in the Yellow Pages under "Process Servers." The cost to deliver the notice is a cost that you can recover as part of the judgment, if you win.



- **Other Personal Service:** Another person 18 years of age or older, who is not involved in the case, may personally deliver the notice to the defendant for you. This person must deliver the notice at the defendant's residence address and give it to someone who resides there who is over 12 years of age. Or, it can be delivered at the defendant's place of business, but must be handed to the defendant personally. If the defendant is a corporation, the notice must be delivered to the company president (or his or her secretary) or the manager (or his or her secretary).
- **Service by Certified Mail:** You can also serve the defendant by sending the Notice of Small Claim Form certified mail, return receipt requested. The signature of the addressee is required. Remember that a person can refuse to accept registered or certified mail. If that is likely to happen, you should arrange to have someone personally serve the notice on the defendant, as described above.

Time for Notifying the Defendant

You must notify the defendant at least ten days before the date of the trial. Usually, the hearing date is three or four weeks after you file the claim form, so that you have plenty of time to notify the defendant. You should not wait until the last minute to serve the notice, but should do it as soon as possible.

Proof of Service

Before the trial date, you should file with the district court clerk proof that the defendant was served with the notice. If the

Sheriff or a professional process server delivers the notice to the defendant, they will complete a certificate of service and send the original to the court for you. You must file the certificate with the Small Claims Court before the trial. If the defendant was served by another person, the person delivering the notice must sign an affidavit of service before a notary public or complete a return of service Form (attached as Exhibit 2). The affidavit or certificate must be filed with the court clerk. If the defendant was served by mail, the return receipt with the defendant's signature must be filed with the court clerk before the trial.

Responding to the Claim

If you receive a Notice of Small Claim Form notifying you that a claim has been filed against you, you should respond to it.

If You Do Not Contest the Claim

If you do not wish to contest the plaintiff's claim, you may (1) make an out-of-court settlement with the plaintiff before the date of the trial, or (2) not show up at the trial. If you do not show up, however, the plaintiff may get a judgment by default for the full amount he or she claimed, plus the \$25.00 filing fee and costs of serving the notice on you.

If You Contest the Claim

If you wish to contest the plaintiff's claim, you should prepare for trial as described below. You will need to collect all possible documents and evidence and arrange for your witnesses to attend the trial. No written pleading in response to the Notice of Small Claim is necessary. If you are under



18 years of age, a parent, guardian or friend over 18 must represent you at the trial.

Counterclaim

If you have a claim against the plaintiff, you can arrange to have that claim resolved at the same trial. This is called a *Counterclaim*. If you wish to make a counterclaim, you must file a Notice of Small Claim Form with \$25 with the district court where the trial will be held and you also must notify the plaintiff, as described above. Note that if you file a counterclaim, you might not be able to appeal the decision.

Settlement

Even after filing the case the parties may want to try to settle the dispute before trial. Sometimes, if the defendant is willing to pay you less than you asked for in the claim form, it may be worth settling to avoid the chance that you may lose your case in court. On the other hand, if the defendant offers you less than what you have claimed and you feel you will be able to explain to the judge why you are right and should get all that you have claimed, you may not want to accept the settlement offer.

Notifying the Court of a Settlement

If you settle your case and decide to drop your claim before trial, you should call the court clerk or come to the court on your trial date and explain to the judge that you have settled your case. If you fail to appear on your trial date, your case will be dismissed. This can be a problem if the defendant has agreed to pay you in the future, but you have not received the money yet. If this is the case, you should appear in front of the judge on your trial date and tell him or her that you have agreed with the defendant

to settle the case, but that you have not received your money. The judge will postpone your case for approximately two weeks to give the defendant the opportunity to pay.

Settlement in Writing

An out-of-court settlement should be in writing, signed by the defendant and yourself and approved by the judge. This will provide a written record of the terms of the agreement. You can present a written agreement to the judge the day your trial was scheduled, or file it with the court clerk for the judge to sign before your trial date.

Hearing Before a Judge

Preparing Your Case or Your Defense

During any court day, the judge must hear and decide many cases just like yours. The judge will want to hear and decide your case quickly, so you should be well prepared. Your preparation should include:

- The most important thing in preparing for trial is getting together any papers or other documents that are important to your case, such as letters, your lease, receipt of payments, canceled checks, photographs, work orders, repair statements or other documents.
- If you will have witnesses testify for you, you need to make sure your witnesses come to court. You should write a letter to each witness and give each of them a copy of the Notice of Small Claims Form that shows the date, time and place of the hearing.
- You should write out all the important facts of your case to help you prepare and to make sure that during the



hearing you do not forget anything. This will help you organize your thoughts so that you can present your case quickly and clearly to the judge.

- You may also want to watch a Small Claims Court trial a few days before your trial date so that you get a sense of what the trial hearing is like.

Failure to Appear

On the date of the trial, if the plaintiff does not appear for the hearing, the case will be dismissed without prejudice. That means you can file it again. If the defendant fails to appear, the judge will ask the plaintiff to provide proof that the Notice of Claim Form was properly delivered to the defendant. If there is proper proof of service, the judge will enter judgment by default for the amount of the claim that you can prove, plus the filing fee and cost to serve the notice on the defendant. If the judge awards judgment by default, he or she cannot award more than what you claimed on the Notice of Small Claims Form plus the costs.

Witnesses

Both the plaintiff and defendant have the right to offer evidence on their behalf by witnesses appearing at the hearing. A witness is someone who can help you explain to the judge why you are entitled to the money you are claiming. The witness must have personal knowledge of the facts that he or she is asked to testify about. You cannot force a witness to come to the trial and testify for you. They can testify for you only if they are willing to come to court voluntarily. You should make sure that the witnesses who are willing to testify for you know when and where the trial will be held.

The Hearing

The hearing is informal, but each court has its own procedures and you should ask the court clerk about those procedures. During the hearing, the judge may informally consult with any of the parties or witnesses or otherwise investigate the dispute. The sole object of the hearing is to dispense justice between the parties. At the hearing, you must convince the judge that you are right by showing him or her the facts which support your case. Each party will have a chance to explain his or her side of the story to the judge and present evidence and witnesses. The judge will ask questions and referee the proceedings.

Presentation of Evidence

When you arrive at the courtroom, tell the court clerk who you are and that you are ready for trial. When your name and case is called, walk up in front of the judge. The judge will swear in both of the parties and each of the witnesses. The judge then will ask you to explain why the person or company you have brought the claim against owes you money. **Be brief and to the point.** Tell the judge the important facts. If you have brought any papers with you that support your case, show them to the judge. If you have brought any witnesses with you, ask the judge to allow them to testify for you. After you have told the judge why you should get the money you claimed, the judge will then ask the defendant his or her side of the story. Throughout the hearing, you should be polite and not interrupt the other party or the judge when they are speaking. You should not get angry or mad or show a temper to the court.



The Judge's Decision

After the judge has heard the evidence presented by both parties, he or she will announce his or her decision, which is called the Judgment. If the plaintiff wins, the judge will decide how much money the defendant owes. If the defendant wins, the judge will dismiss the case without awarding any money to the plaintiff. If the defendant has brought a counterclaim the judge will either dismiss it or decide how much money the plaintiff owes the defendant.

Form of Judgment

If you have won, the judge will award you a money judgment. If both parties are present for the hearing, the judge may prescribe certain terms and conditions for paying the judgment, including a payment plan. It is important that once the judge enters a judgment that you ask the judge to inquire of the defendant if he or she is able to pay immediately. If the defendant cannot pay immediately, you should ask the judge to order a payment plan.

Appealing the Judgment

Who Can Appeal

Neither the defendant nor the plaintiff can appeal a judgment if the amount initially claimed by the plaintiff was less than \$250. If the party who files a claim or counterclaim loses, he or she is not permitted to appeal if the amount claimed was less than \$1,000. Otherwise, if you lose and a judgment is awarded against you, you can appeal the judge's decision. To appeal, you must pay \$200 for the superior court filing fee.

When to Appeal

If you wish to appeal, you must file your appeal within 30 days of the date the judgment was entered.

Where and How to Appeal

To file an appeal in the King County Superior Court, you must:

- Complete a written Notice of Appeal. A Notice of Appeal Form is attached as Exhibit 3.
- Serve a copy of your Notice of Appeal on the other party and file an affidavit or certificate of service with the district court clerk where your small claims case was originally heard. You can use the same Form of affidavit or return of service Form found at Exhibit 2.
- File the original of the Notice of Appeal in the district court where your claim was heard.
- Pay to the district court clerk a \$6.00 transcript fee to have the transcript of your hearing prepared. Once it is prepared, it will be sent to the superior court.
- Post a bond of \$100 (cash or surety) at the district court. To stay enforcement of the small claims judgment entered against you, you may have to file a supersedeas bond of at least twice the amount of the judgment.
- Deposit at the district court the \$200.00 superior court filing fee in cash, money order or cashier's check payable to the superior court clerk.



Hearing Your Appeal

Once you have filed an appeal, the superior court will notify you of the procedures and date for hearing your appeal.



HOW TO COLLECT A SMALL CLAIMS JUDGMENT

If you won a judgment you are entitled to be paid. The person who won the judgment and seeks to collect it is called the *judgment creditor*. If you lose and judgment has been entered against you, you have an obligation to pay it without delay. The person who owes the money and must pay the judgment is called the *judgment debtor*.

The Small Claims Court cannot collect your judgment for you. If the losing party fails to pay the judgment within 30 days or within the time otherwise ordered by the court, you will need to pursue collection of the judgment. You first must certify the judgment and then seek to garnish the debtors' judgment wages or bank accounts or attach some of his or her other assets. The cost to certify the judgment and certain of the costs for garnishment or attachment can be recovered from the judgment debtor as collection costs. This section outlines the collection process and offers helpful tips for collecting a small claims judgment.

Collecting the Judgment Yourself

Avoid Harassment

A word of warning before you start: The law provides certain ways to assist you in collecting your money. Once you get a judgment, you are free to pursue these debt collection methods. You may not harass, annoy, or threaten the judgment debtor or his or her family. Avoid the temptation to call the judgment debtor's house to ask why he or she has not paid you yet.

Ask the Judgment Debtor to Pay

You must first get a copy of your judgment from the district court clerk. Be sure to have the court number of your case. Be sure to get a copy of the judgment for yourself and keep it with your records. You then should send a certified or registered letter to the judgment debtor (keeping a copy for yourself) stating the amount of the judgment and demanding payment. This is especially important if the judgment was obtained by default (that is, the defendant did not appear in court). If the defendant did come to court and knows about the judgment, he or she should be given a reasonable time before proceeding further.

Certifying the Judgment

If the judgment debtor fails to pay the judgment within 30 days, according to the terms established by the judge or an agreed-upon payment plan, you should notify the court and the judge who heard your case and who will certify the judgment. You must do this by filling out the proper form, which you may obtain from the court clerk. A sample Form is also attached as Exhibit 4. The judgment is then entered on the judgment docket of the district court and thereafter you may seek to collect the judgment by garnishment, execution or other process. The judgment may also be entered on the judgment lien dockets in the superior court. Be sure you get the new judgment docket number because you will need it if



the person does not pay you and you have to seek to collect.

Collection Procedures

The most effective means of enforcing your Small Claims Court judgment is through the legal procedures of garnishment or execution described below. You may also turn the judgment over to a collection agency. You may want to consider contacting an attorney if you need help in collecting your money. Each of these methods has advantages and drawbacks.

Garnishment

To collect a judgment, you may garnish a judgment debtor’s bank account or his or her wages. Through the procedure called *garnishment*, you can require the judgment debtor’s bank or employer to reveal to the court how much money it is holding for or owes to him or her. The court can then require, through an order called a Writ of Garnishment, that the judgment debtor’s bank or employer pay a certain part of the money owed to him or her into the court registry, which will then turn the money over to you.

What Is Garnishment?

The concept of a garnishment is that, because the judgment debtor owes you money, you can go to someone else who owes the judgment debtor money (or is holding money for the judgment debtor) and intercept that money. The bank, employer or anyone else who owes the judgment debtor money, or holds money for the judgment debtor, is called the *garnishee defendant*. To garnish money owed to the judgment debtor, you must know where he or she banks, where he or she works, or of someone who owes the judgment debtor

money who can be garnished. A garnishment will cost you at least \$20.00, plus the costs of serving the papers (by personal service or certified mail). If you are successful, you can recover these costs as part of the judgment you are collecting.

Limitations on Amount to Garnish

You may only garnish the amount of the judgment debtor’s disposable earnings in excess of the amount allowed by law, which is now \$127.50 per week, or an amount more than 75% of his or her disposable earnings, whichever is less.

Garnishment Procedures

The following steps are steps necessary to garnish the judgment debtor’s bank account or employer wages.

Step 1

Gather information

Before you can start a garnishment action it will be necessary to first obtain certain information about the judgment debtor. If you intend to garnish the judgment debtor’s bank account, you need to know the name of his or her bank, the address of the bank’s head office (or the branch address if you know the branch at which the judgment debtor banks), and the judgment debtor’s line of work and/or account number. If you have paid any money to the judgment debtor by check, you may be able to determine this information from the back of the canceled check. If you want to garnish the judgment debtor’s wages, you will need to know the name and address of his or her employer. If necessary, you should inquire from his or her friends, neighbors, tenants or other acquaintances where he or she works. You may also learn



the location of his or her bank account in this manner.

Step 2

Have the judgment entered

Request the court clerk to certify the Small Claims Court judgment to the district court. The court clerk will “enter” the judgment on the district court’s regular judgment docket. This takes about a week and there is no charge.

Step 3

Get the forms

Forms and materials you need to proceed with a garnishment are attached, and also are available from any legal supply store. You will need the following forms:

- ***Application for Writ of Garnishment - Affidavit*** (Form A).
- ***Writ of Garnishment*** (Form B) for garnishment against a judgment debtor’s bank account.
- ***Writ of Garnishment*** (Form C) for garnishment against an employer.
- ***Answer to Writ of Garnishment, “Non-employer Form”*** (Form D) for garnishment against a judgment debtor’s bank account) or ***“Employer Form”*** (Form E) (for garnishment against a judgment debtor’s employer).
- ***Second Answer Form*** (Form F) (to be used in conjunction with Form E when there is a continuing lien on wages (see pg. 14).
- ***Notice of Garnishment and of Your Rights*** (Form G).

- ***Exemption Claim*** (Form H).
- ***Affidavit of Mailing Writ of Garnishment*** (Form I).
- Envelopes.

Step 4

Fill in the forms

- ***Application for Writ of Garnishment - Affidavit*** (Form A)

This is the Form which you use to request the Writ of Garnishment from the court. Carefully fill in the information. You must sign the affidavit under oath stating that the information is true and accurate to the best of your knowledge. You will need one original and one copy of the Application.

- ***Writ of Garnishment*** (Forms B and C)

A Writ of Garnishment is a court order directing an employer, branch of a bank, or someone else who owes money to the judgment debtor to withhold payment of that debt, and to tell the court what amount they owe to the judgment debtor. If the garnishment is against a bank, the Writ of Garnishment must include a statement signed by you stating the judgment debtor’s place of residence and business, occupation, trade or profession or his or her account number. Form B should be used for this purpose.¹ If the garnishee is the debtor’s employer or otherwise pays the debtor’s earnings, Form C should be used. You will need four completed copies of either Form B or C.

¹ If the writ is issued under a court order or judgment for child support, you must insert the following phrase into the caption: “This garnishment is based on a judgment or court order for child support.”



■ **Answer to Writ of Garnishment**
(Form D or Form E)

You serve a copy of this Form with the Writ, and the garnishee defendant fills it out and sends it to the court. There are two different forms for the Answer to the Writ of Garnishment. Form D is used by a garnishee who is the judgment debtor’s employer. Form E is used by a garnishee who is the judgment debtor’s bank or someone else who is not the judgment debtor’s employer. The difference between the “Employer Form” (Form D) and the “Non-Employer Form” (Form E) is that the “Employer Form” includes instructions to the judgment debtor’s employer on how much money he or she can withhold. Remember to check to make sure you are using the right form. You will need four copies of either Form D or Form E.

■ **Notice of Garnishment and of Judgment Debtor’s Rights**
(Form G)

This Form is already filled out for you. It tells the judgment debtor what his or her rights are when a bank account or wages are to be garnished.

■ **Exemption Claim** (Form H)

This is the Form which judgment debtor must complete to claim exemptions from garnishment of his or her wages or bank account.

■ **Affidavit of Mailing Writ of Garnishment** (Form I)

This Form is necessary to prove that you have served the papers on the judgment debtor and the garnishee defendant.

- Three prestamped and preaddressed envelopes, addressed respectively to

the judgment debtor, the district court clerk, and to yourself.

Step 5

Process the completed forms

Take these forms and materials to the district court clerk who will review and enter the necessary information on them. The clerk will stamp a new number on the forms each time a Writ of Garnishment is issued. Be sure all the forms are numbered. The clerk will charge you a \$6 filing fee for issuing a Writ of Garnishment. The clerk will keep the Application for Writ of Garnishment -Affidavit and the original Writ of Garnishment. At this time you should ask the clerk for a copy (not certified) of your “judgment transcript.” This is the court’s record of your case, which you will need later. There will be a small fee for copying this transcript.

Step 6

Serve the garnishment papers

After you have presented your papers to the court clerk, you should still have:

- Three copies of the Writ of Garnishment;
- Four copies of the Answer to the Writ of Garnishment; and
- Three stamped envelopes addressed respectively to the clerk of the court issuing the writ, the attorney for the plaintiff (or to the plaintiff if the plaintiff has no lawyer), and the defendant.

You will also need:



- A \$10 check or money order payable to the garnishee judgment debtor.

You now must notify both the judgment debtor and the garnishee defendant of the garnishment. To do this, pick a day in which you are reasonably certain that the garnishee defendant is holding money for the judgment debtor. For example, if the garnishment is against the judgment debtor's employer, just prior to payday; if the garnishment is against the judgment debtor's bank, on pay day or the day after.

Personally serve or mail by certified mail, return receipt requested, one of the Writs of Garnishment and four of the answer forms, the three envelopes and \$10 to the judgment debtor's employer or bank. You will need to file a certificate or affidavit of service or the return receipt with the court clerk when the post office returns it to you.

If the garnishment is against a bank, you may serve the head office of that bank and such service will be effective against any of the bank's branches. You may serve the branch of the bank if you are certain that it is the branch where the judgment debtor has his or her account.

Step 7

Notify the Judgment Debtor

On the same day that you notify the garnishee defendant, mail to the judgment debtor by certified mail, return receipt requested, one of the remaining two copies of the Writ of Garnishment, a copy of the judgment which you obtained from the court clerk (or affidavit in support of the application for writ if the garnishment), one copy of Notice of Garnishment and one copy of the Exemption Claim form. You should be sure that the garnishee defendant

will be notified before the judgment debtor receives the certified letter. The judgment debtor must be promptly notified of the garnishment, but you need not tell him or her of the garnishment before the garnishee defendant has been served.

After you receive the return receipt of the certified mail to the judgment debtor and the garnishee defendant, you must file the affidavit of mailing with the court. You must attach to the affidavit of mailing the return receipt of the garnishee defendant and the return receipt or the mailing returned as undeliverable to the judgment debtor.

The Judgment Debtor's Exemption Claim

The judgment debtor may claim one or more exemptions. The judgment debtor has 28 days after the date on the Writ of Garnishment to deliver the completed Exemption Claim Form (Form F) to the court clerk, with a copy mailed to you. If the judgment debtor claims any exemptions, you have 7 days following receipt of the claim of exemption to mail to the judgment debtor (certified mail, return receipt requested) a declaration objecting to the claim of exemption. Your declaration must be accompanied by a notice of hearing on your objection to the Exemption Claim. A hearing should be held NOT LATER THAN 14 days after your receipt of the Exemption Claim. The notice of hearing must also be sent to the court. At the hearing, you must explain why the court should not allow the judgment debtor's exemption. After you receive the return receipt showing delivery to the judgment debtor of your objections to the exemption and a notice of hearing, mail a copy of these documents to the garnishee defendant.



If you do not object to the exemption claim, or do not object within seven days after receiving the judgment debtor's claim of exemption, then not later than 10 days following your receipt of the exemption claim, you should obtain a court order and deliver it to the garnishee defendant telling the garnishee defendant to release exempt assets to the judgment debtor. If you do not comply with the exemption rules, the judgment debtor is entitled to receive from you \$50 plus the actual damages he or she sustains because the exempt property was not released.

Garnishee Defendant's Answer and Judgment

The garnishee defendant may answer within 20 days, admitting that he or she owes money to the judgment debtor. If this happens, you must wait 20 more days after the answer has been received before you can collect your money from the garnishee defendant. After the 20 days, contact the garnishee defendant to see what they will require before they will pay the money to the court clerk. Find out whether the garnishee defendant needs a regular copy or a certified copy of the judgment before the money is paid to the court clerk.

Upon payment to the court clerk, you may pick up the money; or the clerk might mail it to you directly. If the garnishee defendant owes money to the judgment debtor, but not as much as requested in the Writ of Garnishment, you may take the money the garnishee defendant has withheld and ask the court to issue another Writ of Garnishment for the rest by filing new paperwork.

A Continuing Lien on Wages

If the garnishment is a "continuing lien" against the wages of the judgment debtor, you may receive an Answer within 20 days. A continuing lien is good for 60 days after service upon the garnishee defendant. Shortly before the 60-day period of the continuing lien has been completed, mail to the garnishee defendant employer three additional stamped envelopes and four Second Answer Forms (Form F). Upon receipt of the second answer within 20 days, you may proceed to collect the money which has been withheld. As before, if the money withheld is insufficient, you may have to have another Writ of Garnishment issued.

If the Garnishee Defendant Denies Owning Any Money

The garnishee defendant may answer within 20 days, denying that he or she owes the judgment debtor any money. If the garnishment is against an employer, this may mean the judgment debtor no longer works for the garnishee defendant, or it may mean that someone else has sent the employer a Writ of Garnishment before you did. If this happens, the garnishee defendant will indicate in his answer to you when the earlier Writ of Garnishment will end. On the date the earlier garnishment ends you should mail to the garnishee defendant four additional answer forms (Form E) with the number filled in by yourself or the court clerk, and the words "second answer," and the prestamped, preaddressed envelopes.

If you believe that the garnishee defendant's answer is incorrect, you should write a personal statement to the court telling the judge why you believe the garnishee defendant's answer is incorrect. You may need the assistance of an attorney in this situation.



The garnishee defendant may answer that he or she owes money to someone of a similar (but not identical) name and ask the court to determine whether that person is the judgment debtor. If this happens you can ask the court for an order commanding that person to answer whether or not he or she is the same person as the judgment debtor. The court then will decide the issue.

The Garnishee Defendant's Failure to Answer

The garnishee defendant may not answer within the 20-day time limit. In this case, you are entitled to a default judgment against the garnishee defendant for the full amount of the garnishment. This means the garnishee defendant will owe you the money whether or not he or she owes any money to the judgment debtor. You must present a motion for judgment by default to the court. (See Form J.) You can then collect that judgment from the garnishee defendant just like the original judgment.

Settlement

Finally, should the judgment debtor come to you wanting to settle the debt after you have filed a Writ of Garnishment, take it as a good sign. Ask for the full amount first, and only settle for a large part of the total amount in return for stopping the garnishment. Protect yourself by making copies of any checks you receive from the judgment debtor, so you can capture the bank account information.

Writs of Execution

In order to obtain a Writ of Execution, you must first ask the court clerk to enter the judgment on the district court judgment docket, the same as in a garnishment proceeding. There should be

no charge for this by the court. The court clerk can then issue a Writ of Execution, which is an order directed to the Sheriff. You may then take this order to the Sheriff and the Sheriff is required to seize certain property and sell it in a manner prescribed by law. The proceeds from this sale of the judgment debtor's property will be used to pay your judgment.

Benefits of this approach are that Writ of Execution is issued at no charge (unlike a Writ of Garnishment) assistance of an attorney will probably not be needed, and the cost of execution (\$80 plus mileage) can be recovered. The drawbacks are that the Sheriff will need the exact details of the description and location of the property which is to be seized, will require a bond double the value of the property taken and sold (with a minimum of \$5,000) and certain other legal limitations on the kind of property the Sheriff can take under this procedure. Because of these disadvantages, garnishment is recommended over execution. This pamphlet does not cover in detail the steps you should follow to use execution.

Private Collection Firms

The rules of Small Claims Court do not allow you to be represented by an attorney during the actual court proceedings. Once you obtain a judgment, however, you are perfectly free to seek the assistance of an attorney or others who specialize in debt collection. There are both private law firms that specialize in debt collection, and law firms who devote much of their attorneys' practice to this area. These lawyers can be found in the Yellow Pages under "Attorneys - Collections." Other debt collectors may be found under the "Collection Agencies" heading. Private collection agencies can assist you by helping with some of the



collection methods described in this chapter, as well as with letters and phone calls. You will be spared the trouble and grief of trying to collect your judgment. Also, experienced agencies know what can and cannot be done to collect your debt. While seeking the assistance of a private collection agency may be the easiest way to get at least some of the money, the collection agency will usually charge between one-third and one-half of what is collected.



EXHIBITS

Attachments to Small Claims Handbook:

Exhibit 1	Notice of Small Claim
Exhibit 2	Return of Service
Exhibit 3	Notice of Appeal
Exhibit 4	Satisfaction of Judgment

Garnishment Forms:

Form A	Application for Writ of Garnishment (including instructions for filling out)
Form B	Writ of Garnishment (garnishment against bank account)
Form C	Writ of Garnishment (garnishment against employer)
Form D	Answer to Writ (non-employer form)
Form E	Answer to Writ (employer form)
Form F	Second Answer Form
Form G	Notice of Garnishment and of Your Rights
Form H	Exemption Claim
Form I	Affidavit of Mailing
Form J	Motion, Affidavit and Order of Default
Form K	Motion and Declaration for Judgment and Order to Pay
Form L	Judgment and Order to Pay