

**HOW TO USE THE
SMALL CLAIMS DIVISION OF
THE PINEVILLE CITY COURT**

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**ORIGINAL SIGNED BY
GARY K. HAYS, JUDGE**

**Gary K. Hays
Judge, Pineville City Court**

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WHAT IS SMALL CLAIMS COURT?

The Small Claims Division is a part of the Pineville City Court established pursuant to LA Revised Statutes 13:5200-5212. You may sue to resolve minor civil disputes and to recover claims of up to **five thousand dollars (\$5,000.00)** a claim, generally speaking, asserts a legal right you may have.

You may use the Small Claims Court to sue someone who **LIVES** within Wards 9, 10, or 11 of Rapides Parish. You may also sue in Small Claims Court if you were injured within the limits of Wards 9, 10, or 11 of Rapides Parish, regardless where the party causing injury may live. Otherwise, the Court's authority to handle cases affecting defendants who do not reside within Wards 9, 10, or 11 depends on numerous factors that warrant professional legal advice.

YOU MUST BE EIGHTEEN YEARS OF AGE to file a case in Small Claims Court, but minors and incompetents may sue through a parent or guardian. An officer or employee of a corporation or unincorporated association may file suit on behalf of the organization if the dispute involves an open account or negotiable instrument; otherwise, a corporation must be represented in court by a licensed attorney (LA RS 37:212C).

WHAT KIND OF SUITS MAY BE FILED IN THE SMALL CLAIMS COURT?

You may sue if you believe someone owes you money. For example, you may sue if:

- Someone fails to return a deposit to you;
- Products that you purchased are defective and the seller refuses to repair, refund or replace;
- You suffer loss or injury as a result of the negligence or intentional misconduct of another;
- Your employer fails to pay wages, salaries, or commissions you are due;
- You seek possession of personal property you are due (but not real estate)

The following types of cases **MAY NOT** be instituted in the Small Claims Court:

- Suits involving annulment, separation, divorce, alimony, separation of property, temporary restraining order or injunction, succession, interdiction, receivership, liquidation, habeas corpus, or the title to real estate;
- Suits against a state agency, parish, municipality or other political subdivision;
- Suits against a public official performing official duties;
- Suits seeking eviction of tenants.
- Suits by Licensed Creditors
- Summary Proceedings
- Executory Proceedings

HOW DO I SUE IN SMALL CLAIMS COURT?

Come to the Pineville City Court, 904 Main Street, Pineville, La. (telephone 318-449-5656). The court cost deposit for filing a Small Claim's action by certified mail is **ninety-four dollars and fifty cents (\$94.50)** for the first defendant in a case and **thirty-five dollars (\$35.00)** for **each additional defendant** added to the suit. The filing for to have a defendant served by the Pineville City Marshal's office is **one hundred-fourteen dollars and fifteen cents (\$114.50)**. This filing fee is set by the LA Revised Statutes, and may change annually. Payment normally assessed against the party ultimately losing the lawsuit, but may be assessed against the other party.

YOU MUST HAVE WITH YOU:

The complete and proper legal name and address of the party you wish to sue. This party is called the "**DEFENDANT**". You will be the "**PLAINTIFF**".

If a business is being sued, call the Corporation Division of the Louisiana Secretary of State at (225)925-4701 to find out if the business is incorporated or if it is simply using a "**trade name**" and is not incorporated.

If the business if incorporated you should request the name and address of the **REGISTERED AGENT** for the corporation; that is the individual who will receive "**service**" or notice of the suit. You should also find out the address of the **REGISTERED OFFICE** of the corporation, as this is the corporation's licenses.

If the business **is not** incorporated, you must find the **NAME AND ADDRESS OF THE OWNER** of the business, not the name of the business itself. This information may be obtained by contacting City-Parish authorities who issue occupational licenses.

If you are suing someone as a result of an automobile accident and you do not know the owner of the vehicle causing the injury, the license number is helpful for determining the name and address of the owner. You can write or go to the Motor Vehicles Registration, 7701 Independence Blvd., Baton Rouge, La. and request this information. There will be a small fee.

You must file in the suit record the originals or certified copies of written evidence that would help support your claim in court, such as:

CONTRACTS
LEASES
RECEIPTS
PAID BILLS

REPAIR ESTIMATES
LETTERS/WRITTEN RECORDS
PROMISSORY NOTES
CANCELLED CHECKS

Bring any documents or other evidence you believe would be helpful in proving your case to court at the time of the trial, if not already filed into the suit record.

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FILING YOUR CLAIM:

1. The Clerk will give you a form entitled “**affidavit**”. Be prepared to provide the following information:
 - Your name, address and daytime telephone number;
 - The correct name and address of the party you are suing. If it is a corporation, you will need the proper name and address and the registered agent’s name and address;
 - A simple but **COMPLETE** statement of why you are suing. This should include:
 - Dates, places and persons as they relate to your claim; and
 - The total amount of money you are trying to recover with an itemization and explanation.

REMEMBER: The limit is five thousand dollars (\$5,000.00), excluding interest, court costs and attorney fees, or penalties (if attorney fees are recoverable).

If you receive a judgment in your favor, you can claim interest on the sum of money owed running from the date you originally filed suit until the money is actually paid. This is known as “judicial interest” and the rate is fixed by law.

2. Next, take your completed Affidavit form to the Small Claims Division, sign it before the Clerk, and pay the required fee. If you chose to take the form with you and complete it at a later date, you may have it notarized before you bring it back to the Clerk’s Office to file your suit. **If this Affidavit is not signed in the presence of the Clerk, it must be notarized by a Notary Public before the Clerk can accept it.**

WHAT HAPPENS AFTER YOU FILE SUIT:

Your trial date will be set for approximately **6 to 8 WEEKS** after you file your suit. You need to advise the Clerk immediately of any witnesses who will need to be subpoenaed to testify.

If you desire, you may request the Pineville City Marshal’s office to make special service. This will require an additional fee of not more than **twenty dollars (\$20.00) per special service in Wards 9, 10 or 11 . Please be advised when service of the Original Suit is Domiciliary service and a Judgment is granted, service of the Judgment will be made upon the defendant with an additional fee of \$20 for cost of service.**

If the defendant is to be served by certified mail, the Clerk’s Office will mail a copy of your Statement of Claim and Citation, along with an “**ATTENTION SHEET**”, to the defendant by certified mail, return receipt requested to the address provided. The Attention Sheet informs the defendant that he has been sued and will have ten calendar days (inclusive of holidays and weekends) in which to answer.

If you request that service be made by the Marshal, the Marshal will attempt to serve the defendant at the address provided.

When service is made on the defendant, the Clerk's Office will mail the plaintiff the service information.

If service is to be made by certified mail, you cannot get an earlier court date. The original court date set when you filed your suit has been calculated to allow for all legal and postal delays. If the defendant has been served and has filed an answer or other documents or pleadings contesting the claim, the Clerk's Office will send the plaintiff a copy of the same.

It is the defendant's right to request that the action be transferred from the Small Claims Division to the regular civil docket. A written motion requesting this transfer must be filed with the Clerk's Office within the same ten calendar days allowed for the defendant's answer to be filed. A copy of this form will be provided upon request. Transferring the case to the regular civil docket preserves both parties' right to appeal an unfavorable judgment of the court. An appeal would permit a review of the trial judge's ruling a higher court to determine whether the judge properly applied the law to the facts of the case. Transfer to the regular civil trial division also means that there will be no relaxation of the rules of evidence or restrictions upon attorneys' participation. If the defendant does transfer the case to the regular civil docket, the Clerk will notify you in writing. In such cases, you should be alerted to the advisability of hiring an attorney.

If the Secretary of State has been made a party to the suit, the delay for answering the suit and/or transferring the suit to the regular docket is fifteen (15) days as to all parties.

No continuances will be granted in the Small Claims Division, except in extreme extenuating circumstances which must be approved by the Judge. Only one such continuance will be granted. Thereafter, failure to appear for trial will result in the dismissal of the case.

HOW DO I PREPARE FOR COURT?

You, as the plaintiff, have the burden of proving your case before the Judge at a trial by "**competent evidence**". This is a balancing test by which the Judge weighs the probabilities of accuracy of each party's respective claim. Your evidence, as the plaintiff, must be greater for you to win your case. The following may be helpful in preparing for your trial:

-Arrange for **WITNESSES**. These are people who saw what happened or **have personal knowledge** that might help your case. Have them arrive in court on the hearing date. If a witness will not agree to appear voluntarily, you may ask the clerk to **SUBPOENA** him/her. An advance court cost **deposit of thirty-five dollars (\$35.00) for witnesses residing in Rapides Parish and a deposit of fifty dollars (\$50.00) for witnesses residing outside of Rapides Parish** will be charged for each subpoena issued. If a witness is not subpoenaed and does not appear at the hearing, his absence will not ordinarily constitute good grounds for a postponement or continuance of your case. In such cases you may be required to proceed to trial even if your "**un-subpoenaed**" witness fails to appear.

-Gather all the evidence that relates to your claim or your defense if you are suing, or being sued. This includes, **PHOTOGRAPHS, CONTRACTS, RECEIPTS, PROMISSORY NOTES, LETTERS, CANCELED CHECKS, WRITTEN AGREEMENTS**, or other written material as well as physical objects. **BRING THIS EVIDENCE TO COURT WITH YOU ON THE TRIAL DATE** unless it has previously been filed in the suit record.

-Go over the facts and organize them in your mind. You may want to make an outline of all important facts to bring out since this will probably be your only opportunity to present evidence. If a settlement is reached prior to trial, notify the Clerk's office. If you find that you are unable to attend Court at the date and time set, you **MUST IMMEDIATELY** notify the Court **IN WRITING** to seek continuance. Continuance requests that do not reflect the consent of the opposing party are not automatically granted and must be supported by good cause.

WHAT IF SOMEONE SUES ME?

If you have been served with a Citation, you are referred to as the **"DEFENDANT"** in the matter. Most importantly, **DO NOT IGNORE** the Statement of Claim and Citation and Attention Sheet if you wish to contest the claim against you. Initially, you must decide if you desire to hire an attorney to represent you. Secondly, you must decide whether you wish to transfer the case to the regular civil docket. Removal would enable you to preserve your right to appeal any unfavorable judgment. However, you should be aware that you may hire an attorney. **IF YOU HIRE AN ATTORNEY, THE ATTORNEY MUST TRANSFER THE CASE TO THE REGULAR CIVIL DOCKET WITHIN TEN DAYS FROM THE DATE YOU WERE SERVED. ATTORNEYS ARE PROHIBITED FROM PRACTICING IN THE SMALL CLAIMS DIVISION OF PINEVILLE CITY COURT.**

If you decide to contest the case over any issue, you **MUST** file your answer **IN WRITING** with the Clerk's Office within the ten day period allowed. **IF YOU DO NOT DO SO, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU.** This means that you would lose without a chance to tell your side of the story. Your answer should be truthful and contain every defense you intend to raise.

POSSIBLE DEFENSES INCLUDE:

- No jurisdiction or improper "venue" (wrong court);
- Contributory negligence (negligence on the part of the plaintiff);
- Discharge in bankruptcy;
- Error or mistake;
- Fraud or illegality on plaintiff's part;
- Previous compromise or payment of an obligation;
- Excessive damages claimed.

If you believe you have a claim of your own against the party suing you, you may include it in your answer. The plaintiff must be served with this “**counterclaim**” or “**reconventional demand**” **before the trial**. The defendant (plaintiff-in-reconvention) must pay the basic filing fee, plus an **additional thirty-five dollars (\$35.00) for each service in Wards 9, 10 or 11 and an additional fifty dollars (\$50.00) for service outside Rapides Parish or service being made by the Rapides Parish Sheriff’s office.**

WHAT HAPPENS AT TRIAL?

1. Arrive early and bring all court papers with you. If you are the party suing and arrive late, or do not appear at all, your case may be **DISMISSED**. If you are the party being sued and arrive late, or do not appear at all, a judgment could be entered against you. In other words, **YOU MAY LOSE WITHOUT A HEARING**.
2. If you are **SUING** and the other party is not there, you must still show proof of your claim before you can get a judgment in your favor.
If you are **BEING SUED** and the other party is not there, you may ask that the case against you be dismissed (so you will win the case).
3. You will have the opportunity at trial to present your witnesses and evidence, and the opportunity to pose questions to your opponent(s) questions. The procedure will be more relaxed and informal than an ordinary effort to understand the case and ascertain the truth.
4. After all of the testimony is taken, the judge will announce the decision regarding which party has won the case and the amount of any judgment, if a sum of money is awarded. There are times when the judge will not render a decision immediately after the trial but rather take the matter “under advisement” in order to conduct research. You will be notified of the decision by mail.

A judgment rendered in Small Claims Division becomes final and executory three days after it is signed or served on the defendant when service is necessary, unless within that period of time a “**MOTION FOR NEW TRIAL**” is filed. A judgment establishes that the defendant does or does not owe you money. **IT DOES NOT NECESSARILY MEAN YOU WILL BE PAID.**

If the defendant was not personally served and did not answer the suit or appear at the trial, or if the matter was taken under advisement, the defendant will have to be served with a “**Notice of Judgment**”. This is classified as a “**special service**” and will require an additional deposit of not more than **thirty-five dollars (\$35.00) per special service in Wards 9, 10 or 11 and an additional fifty dollars (\$50.00) for service outside Rapides Parish or service being made by the Rapides Parish Sheriff’s office.**

IF I WIN, HOW DO I COLLECT MY MONEY?

It is **not** the duty or the function of the court to automatically pay or collect what is owed to you. **IT IS YOUR RESPONSIBILITY TO TAKE ANY AND ALL LEGAL ACTION NECESSARY TO COLLECT ON YOUR JUDGMENT.**

In order to collect, you may have to take further action; such as a garnishment of the losing party's bank account or wages, or "**seizure and sale**" of certain nonexempt property belonging to the defendant. Additional court cost deposits are required for these actions, which, like other costs of court, are recoverable from the losing party.

MAY I DO ANYTHING IF I LOSE?

1. Remember that you may lose a case by default simply because **YOU ARE NOT PRESENT** on the hearing date. If you are notified that you have a default judgment against you, or your case has been dismissed, **YOU MAY STILL HAVE A WAY OUT.**

Consider the following:

-Did you file an "**Answer**"?

-Were you notified of the hearing date?

If as the defendant, you did not file an answer but feel you have a valid defense, or you answered but were not notified of the hearing date, you may file a MOTION TO VACATE the default judgment. If the motion is granted, a hearing date will be set to hear your argument(s) as to why the earlier decision should be set aside. If, as the plaintiff, you were not notified of the hearing date, you may file a MOTION TO REINSTATE the case if it was dismissed. If granted, a hearing date will be set to hear your argument(s) as to why the earlier decision should be set aside. Bring all of your evidence and/or witnesses to support your motion on the hearing date. If your motion is granted by the Court, the case will be reopened and you will have an opportunity to have a trial.

2. If you lost your case in a Small Claims hearing, **YOU MAY TRY TO GET A NEW TRIAL.** The grounds for a motion for new trial are:
 - a. The Judgment appears clearly contrary to the law and evidence;
 - b. The party has discovered, since the trial, the evidence important to this cause, which he could not, with due diligence have obtained before or during the trial; or If the trial judge believes there is good grounds therefore.
 - c. Time delays are important on this motion and you should remember the following:

You must file a written Motion for New Trial within three (3) days after the Judgment is signed, or three (3) days after it is served on the losing party if service is necessary under the law. The three (3) days excludes weekends and holidays.

CHECKLIST

PLAINTIFF:

1. Does the claim fall within jurisdiction of Small Claims Division?
2. Are you suing the proper party defendant?
3. Do you have the defendant's proper legal name(s) and address(es)?
4. Did you fill out a complete statement of why you are suing? Include the amount of money you seek to recover, date and locations related to your claim.

DEFENDANT:

1. Do you want to contact an attorney?
2. Do you wish to transfer the case to the regular docket? Must file request within ten (10) DAYS.
3. Do you wish to contest claim? Must file written answer within ten (10) days. In your answer, consider:
 - Is this the proper court?
 - Has debt been discharged in bankruptcy?
 - Was there negligence on part of the plaintiff?
 - Has there been a compromise or payment?
 - Was there fraud, illegality, error, or mistake present?
 - Is the plaintiff seeking excessive damages?
4. Do you wish to "counterclaim" against the plaintiff?

PINEVILLE CITY COURT

Civil Suit # _____

STATE OF LOUISIANA
PARISH OF RAPIDES

Personally came and appeared _____

whose address and telephone number is _____

Deposes and says _____

That _____

whose address is _____

and who is employed by _____

is justly and truly indebted unto the plaintiff in the sum of \$ _____

with legal interest from the date of judicial demand, the _____ day of _____, 20__

for this to-wit: _____

Pineville, Louisiana, this _____ day of _____, 20__.

PLAINTIFF

Sworn to and subscribed before me,

this _____ day of _____, 20__.