

**SMALL CLAIMS DIVISION  
OF  
DISTRICT COURT**

**GENERAL INFORMATION  
AND  
POST-JUDGMENT COLLECTIONS**

*Dear Kentucky Citizen:*

*The Small Claims Division of District Court provides an informal forum for individuals in the Commonwealth to handle noncriminal legal matters for themselves at minimal cost. This makes the judicial system available to citizens without delay. Thousands of cases have been decided in the Small Claims Division of District Court since its inception in 1978.*



*I trust you will find this handbook helpful. It will answer most of your questions concerning small claims cases.*

*Sincerely,*

A handwritten signature in black ink, which appears to read "Joseph E. Lambert". The signature is fluid and cursive, with a large, stylized initial "J".

*Joseph E. Lambert  
Chief Justice  
Kentucky Supreme Court*

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## INTRODUCTION

1. This informational booklet about the Small Claims Division of District Court **SHOULD**:
  - a. help you understand the small claims process;
  - b. provide step-by-step guidance through numerous procedures;
  - c. provide step-by-step guidance on collection procedures if you win your case.

This informational booklet **WILL NOT**:

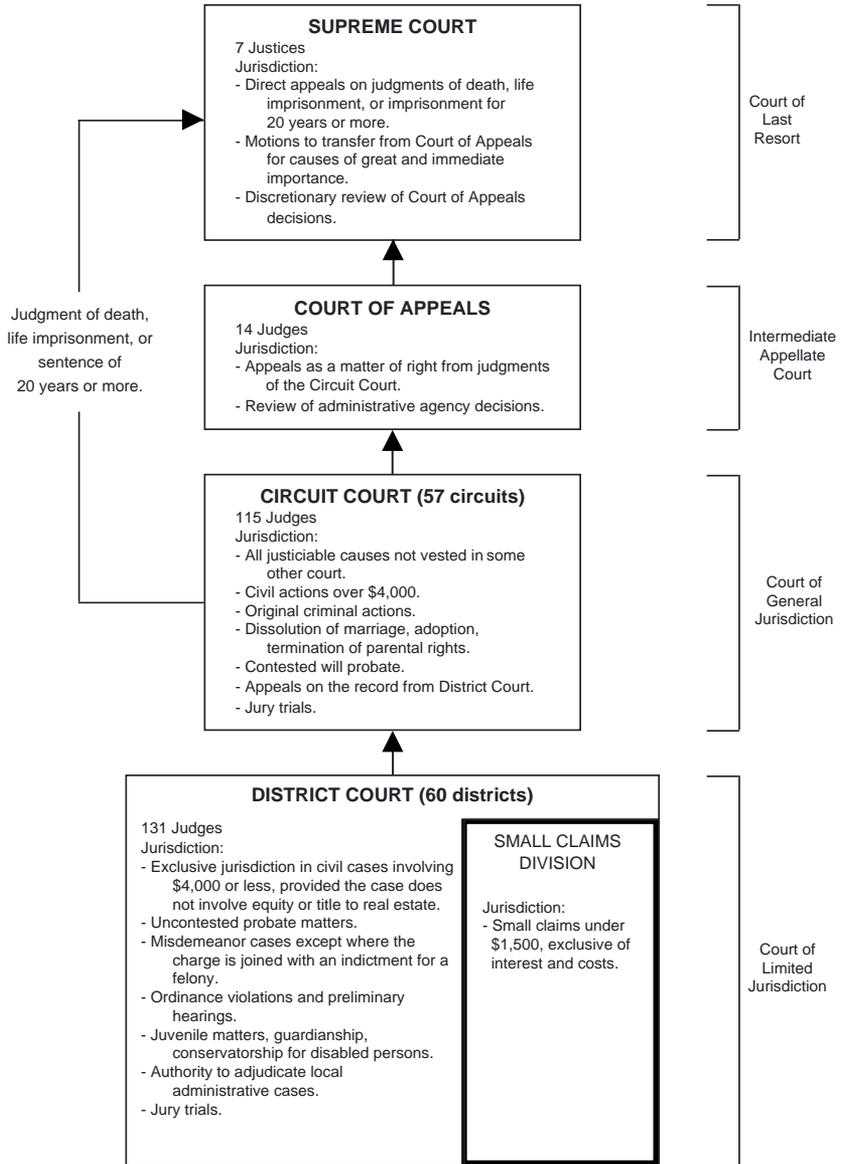
- a. provide legal advice;
- b. make you an authority on small claims procedures;
- c. guarantee you will win your case or collect a judgment;
- d. take the place of an attorney. When you choose to file in the Small Claims Division, you have chosen to represent yourself and be your own attorney. As your own attorney, you are expected to do the things an attorney is expected to do.

You should read this entire Small Claims booklet for information concerning the rights and duties of all individuals involved in the small claims process.

2. **How the Circuit Clerk Can Help.** Your Circuit Court Clerk will provide to you the necessary form(s) to file a small claims case. However, **THE CLERK IS NOT AN ATTORNEY AND CANNOT GIVE LEGAL ADVICE** to you. Many of the forms mentioned in this booklet are available on the Kentucky Court of Justice web site at *www.kycourts.net/forms* and may be completed on line.
3. **Statutory Reference.** The law covering small claims actions is found in the Kentucky Revised Statutes, Chapter 24A.200 through 24A.360.
4. **Lawyer Referral.** If you need an attorney, the following Bar Associations can refer you to an attorney in your area:
  - a. Fayette County Bar Association, (606) 225-8644;
  - b. Northern Kentucky Bar Association, (606) 781-1300;
  - c. Kentucky Lawyer Referral Service (a service of the Louisville Bar Association), (502) 583-1801

# **GENERAL INFORMATION**

# KENTUCKY COURT SYSTEM



## LEVELS OF THE COURTS

The Judicial Branch in Kentucky, known as the Kentucky Court of Justice, has four levels. The structure of the court system is explained in the Kentucky Constitution.

### **Supreme Court of Kentucky**

(Section 110 of the Kentucky Constitution)

The Supreme Court of Kentucky consists of the Chief Justice and six Associate Justices, elected from the seven Supreme Court districts. This court exercises appellate jurisdiction only.

### **Kentucky Court of Appeals**

(Section 111 of the Kentucky Constitution)

The Kentucky Court of Appeals consists of 14 Judges, two from each of the Supreme Court Districts. This court exercises appellate jurisdiction and directly reviews other decisions as ordered by the Supreme Court.

### **Circuit Court**

(Section 112 of the Kentucky Constitution)

There are 57 Judicial Circuits in Kentucky. Circuit Court is held in all 120 Kentucky counties, with some circuits covering more than one county. Circuit Court has “original jurisdiction of all justiciable causes not vested in some other court” and has “appellate jurisdiction as provided by law.”

### **District Court**

(Section 113 of the Kentucky Constitution)

There are 60 Judicial Districts in Kentucky. Like Circuit Court, District Court is held in every Kentucky county. District Court has limited jurisdiction and exercises original jurisdiction as provided by the General Assembly. **KRS 24A.120** gives District Court **exclusive** jurisdiction over civil cases “in which the amount in controversy does not exceed four thousand dollars (\$4,000) exclusive of interest and costs, except matters affecting title to real estate and matters of equity.” The **Small Claims Division** is one of several divisions in District Court. Other divisions include Civil, Probate, Juvenile, and Criminal. Pursuant to **KRS 24A.230, jurisdiction of the Small Claims Division is limited to claims which are not in excess of \$1,500, exclusive of interest and costs.**

## WHAT IS THE SMALL CLAIMS DIVISION?

1. The Small Claims Division of District Court in each Kentucky county settles disputes involving money or personal property valued at **\$1,500 or less**, exclusive of interest and costs. The procedures are informal. You may file a claim or defend yourself without an attorney, or you may employ an attorney to handle your case if you wish.
2. In the Small Claims Division, the parties involved in the dispute go to court at a preassigned time and tell their sides of the story to the judge. The judge makes a decision based on the law governing the facts presented. There is no jury trial in the Small Claims Division of District Court.

### When to Use the Small Claims Division

1. Before filing a small claims suit, contact the other party and try to settle your dispute. A settlement out of court will save you both time and money. If a settlement is reached, put ALL the terms of your agreement in writing. Sign the agreement and have the other party sign it.
2. If you and the other party cannot settle your differences, consider other means of resolving your dispute. If your dispute is with a Kentucky owned and operated business or corporation, you may want to contact the **Kentucky Attorney General's Consumer Protection Division** before you pursue a small claims action. However, they cannot seek damages and they mediate only between an individual consumer and a business. They do not mediate business to business disputes. Call the Attorney General's Office at (888) 432-9257, or (502) 696-5389 in Frankfort, or (502) 425-4825 in Louisville, to request a consumer protection complaint form.
3. **Only after you are sure no settlement can be reached should you file suit in a small claims action.**
4. Before filing suit, you should have some idea of whether the person you are suing has any way of paying if you win your case. In some cases, a person may be "judgment proof" because of a lack of income or property; therefore, even if you win you might not collect your judgment.

5. It is important to file suit immediately after you realize no settlement can be reached. The law sets a period of time (statute of limitations) in which a person must file suit. After this period expires, the person cannot file suit. Statutes of limitations vary with the type of claim. **Claims involving oral contracts must be brought within five (5) years from the time the contract was made. Written contracts have a 15 year statute of limitations, and some personal injury claims have a one (1) year statute of limitations.** If you are unsure about bringing your claim within the proper time, go ahead and file suit; however, if too much time has passed, the judge will dismiss the claim, and you will lose your filing fee. **The Circuit Court Clerk cannot advise you concerning the statute of limitations of your claim.**

### WHO CAN FILE A SMALL CLAIMS SUIT?

1. Any person, corporation, or business with a claim for money or personal property of \$1,500 or less may file suit in the Small Claims Division, **EXCEPT** the following:
  - a. a person or organization in the business of lending money with interest;
  - b. a collection agency or a collection agent; or
  - c. a person or organization with an assigned claim.
2. A parent or legal guardian must file the lawsuit and appear in the small claims case on behalf of a person under 18 years of age or a person adjudged mentally disabled.
3. In Kentucky, an individual may not file more than 25 claims in any one calendar year. A business is entitled to 25 claims for each established location in the district, if that business has been engaged in trade or commerce for at least six (6) months. Limitations on the number of claims filed and other requirements of this section do not apply to claims initiated by city, county or urban governments.
4. If a corporation or partnership is a party to a small claims action, the person who comes to the hearing must be:

- a. an officer of the corporation;
  - b. a person regularly employed in a managerial capacity by the corporation or partnership; or
  - c. an attorney.
5. If you believe you have been wronged and the claim involves \$1,500 or less, and if you do not fall within the exceptions listed in item #1, the Small Claims Division of District Court is available to you. You may sue for actual damages and court costs only.

**Exceptions:** Criminal actions; cases of libel, slander, or alienation of affection; malicious prosecution; and abuse of process cannot be heard in the Small Claims Division. These types of actions must be filed in another court.

6. The Small Claims Division **may not** be the answer in these situations:
- a. Complicated lawsuits should not be filed in the Small Claims Division, even if the loss is under \$1,500.
  - b. The Small Claims Division is not effective in resolving complaints when you cannot find the wrongdoer.
  - c. The Small Claims Division is not the answer when you have been wronged by fly-by-night operators, companies no longer in business, people who have filed bankruptcy, or individuals who have no money or property.

## **WHEN YOU ARE THE PLAINTIFF**

### **How to File Suit**

1. Generally, there are two parties to a lawsuit:
  - a. The **plaintiff** is the person or business who starts the lawsuit.
  - b. The **defendant** is the person or business being sued.

A lawsuit begins when the plaintiff files a legal paper called a complaint with the Circuit Court Clerk. The complaint explains the disagreement.

2. Decide in what county to file your small claims complaint and go to the Circuit Court Clerk's office, Small Claims Division, in that county's courthouse or other court building. Consider the following when deciding where to file your complaint:
  - a. Your small claims complaint may be filed in the county where the person you are suing lives or does business, operates a place of business, or dispatches sales representatives for the purpose of selling a product or service.
  - b. If you are suing about an act that caused injury to someone or something, you may sue in the county where the act happened.
  - c. If you are suing a corporation about a breach of contract, then you may sue in the county in which the contract was to have been performed.
  - d. If your complaint concerns a contract, but the defendant is not a corporation, then different rules apply and it may be best to file the complaint where the defendant lives.
3. The maximum amount of money for which you can sue is \$1,500. Even if your claim is for more, you can choose to sue in the Small Claims Division for only \$1,500, instead of filing suit in another division for a greater amount. The amount of your claim should include both the actual amount due and any extra expenses you paid because of the claim remaining unpaid. You must be able to prove the amount of the claim for which you are suing.
4. Tell the Circuit Court Clerk you wish to file a small claims action. You will be given *AOC Form 175-Small Claims Complaint* to complete. **THE CLERK IS NOT AN ATTORNEY AND CANNOT FILL THIS OUT FOR YOU OR PROVIDE LEGAL ADVICE TO YOU.**
5. You must include on the small claims complaint the correct address of the person you are suing. **It is not the clerk's job to find an address for you.** If you do not have the address, consider looking in the phone book or consulting other available resources.

You must also include on the complaint an explanation of why you believe the defendant has harmed you. DO NOT ATTACH AN

EXPLANATION ON A SEPARATE PAGE. You may complete AOC Form 175 on-line at [www.kycourts.net/forms](http://www.kycourts.net/forms).

If your suit is against a business, it is your responsibility to determine who should be served the summons on behalf of the business. Call the **Secretary of State's Office** at (502) 564-7330 to find out if the business is incorporated and to obtain the name and address of the corporation's process agent. If there are several parties involved and you cannot determine whom to sue, your claim may be too complex to be filed as a small claims action. In this case, you should consult a private attorney for advice and assistance.

6. After completing the complaint form, take it to the Circuit Court Clerk for filing. **You will be charged a fee to file the complaint.** The clerk will issue a summons to notify the defendant of the filing of the complaint. A copy of the complaint and this informational booklet will be sent to the defendant with the summons. Tell the clerk how you want the summons served. You may choose either **certified mail** with a return receipt requested, or have the summons **personally served** on the defendant. **You will be required to pay the Circuit Court Clerk in advance for the cost of mailing the summons by certified mail.** If you choose personal service, pay the service fee directly to the sheriff.
7. If your claim is against an out-of-state corporation with no process agent listed for Kentucky, **you will be required to pay a fee to the Circuit Court Clerk for service by the Secretary of State on the out-of-state corporation.**
8. If the complaint was sent to the defendant by certified mail and the post office could not deliver it, you may want to have the defendant served by personal service. Pay the service fee directly to the sheriff.
9. It is your responsibility to check with the Circuit Court Clerk to be sure the defendant has been served with the summons. **It is not the clerk's responsibility to notify you of this fact.** Your case will not be heard by the judge until the defendant has been served with the summons.
10. Keep a record of any money you spend when filing your claim

(filing fees, mail costs, service fees, etc.). These expenses are considered court costs and may be included in the amount of your judgment.

11. The hearing date will be set within 20 to 40 days from the date the defendant receives the summons with the complaint attached.

### **PREPARING FOR YOUR COURT HEARING**

1. Plan what you are going to say and assemble your evidence before the hearing. You must present all the facts concerning your case to the judge in a simple, logical manner. Start at the beginning and tell your story to the end. You may benefit from observing another hearing prior to your own to get an idea of how small claims hearings are conducted.
2. Prior to the hearing, obtain *AOC Form 025-Subpoena* from the Circuit Court Clerk. You will need a separate subpoena for each witness you wish to appear in court to support your case. The subpoena will be signed by the Circuit Court Clerk when you receive it, but otherwise, it will be blank. **It is your responsibility to prepare the subpoena.**

Individuals who were actually involved in the original matter may give their versions of the story in court voluntarily, without the issuance of a subpoena. A witness served with a subpoena is legally required to appear at the hearing. The subpoena may be served by the sheriff or by any person over 18 years of age by delivering a copy of the subpoena to the witness and filing a return with the Circuit Court Clerk. Allow sufficient time before the hearing date for service of the subpoena.

3. You may also present your testimony and opinion; however, certain evidence, such as hearsay evidence, something you have heard but of which you do not have firsthand knowledge, may not be used. The judge decides what evidence is acceptable.
4. When you go to court, take the originals (or copies, if you do not have the originals) of contracts, letters, receipts, canceled checks, leases, estimates, police reports, photographs, actual damaged

goods or other evidence. The type of evidence you need depends upon your case and what you are trying to prove. You must present evidence to prove every point in your case.

### **If You Reach A Settlement Before The Hearing**

If you and the defendant reach a settlement before the hearing, obtain *AOC Form 199-Small Claims Settlement Agreement* from the Circuit Court Clerk. Complete and sign the settlement agreement form and have the defendant sign it too. Give the settlement agreement to the Circuit Court Clerk for filing. Find out from the clerk whether you and the defendant are required to appear in court if the settlement agreement is filed prior to your hearing. If the judge approves the settlement agreement, it becomes legally enforceable.

### **THE COURT HEARING**

1. On your hearing date, give yourself plenty of time to reach the courtroom before the hour your case is scheduled to be heard. **Be prompt.** Bring your evidence with you and have present all witnesses you need to prove your case.
2. Dress neatly; be polite at all times; listen to the judge; stand when talking to the judge; introduce yourself; be prepared; be brief; be yourself (do not attempt to act like a lawyer).
3. When your case is called, approach the front of the courtroom or respond as you are directed by the judge. The judge will swear you in along with any other parties that are going to testify by asking if testimony given about the disagreement will be the truth.
4. The hearing is informal. The judge will ask to hear your (the plaintiff's) side of the case first. Keep your statement as short as possible without neglecting important facts. Even though you are familiar with the case, the judge is not; therefore, it is important to state everything as clearly as possible and support your statements with evidence. The judge is only concerned with facts relevant to the case.
5. The judge is the sole individual who will decide the case and the only person you must convince. The judge may ask questions in order to better understand your claim.

At the time you present your side of the story, you may also call any witnesses or present evidence to the judge. Each party has the right to examine any evidence presented and may question the other party and witnesses.

6. After hearing both sides of the lawsuit, the judge will make a decision based upon the facts of the case and will enter a judgment which will say who won, how much is to be paid and how it is to be paid.

### **Failure to Appear at the Court Hearing**

1. Even if the defendant does not attend the hearing, you must still be prepared to show the judge proof of your claim.
2. **If you (the plaintiff) do not appear for the hearing, the case may be dismissed.** The judge may grant any counter-claim filed by the defendant, if the defendant can prove his/her claim.

### **WHEN YOU ARE THE DEFENDANT**

1. When you are sued, you will receive from the Circuit Court Clerk or the sheriff, a small claims summons with a copy of the small claims complaint and this informational booklet attached. The complaint will tell you the name and address of the person suing you (**the plaintiff**), the claim of the plaintiff, and the amount of money or property claimed to be owed by you to the plaintiff. The summons will tell you the time and date of your court hearing.
2. When you receive a summons saying you have been sued, you **must** appear in court on the date stated in the summons. If you do not appear on that date, at the time and place specified, the judge may enter a **default judgment** against you for all the money or property claimed by the plaintiff. The judge may further require you to pay all court costs. A judgment is an official court order that can be enforced by garnishment of your wages and/or execution on your property. **It is necessary that you appear on the date shown on your summons.**

3. Consider the following ways to handle your case:

- a. **Settle Your Differences.** After you have been sued, you and the plaintiff still have an opportunity to settle your differences out of court. Consider compromise. Both time and money may be saved by all parties concerned if you can resolve your case prior to a court hearing. Before the court hearing, notify the plaintiff of your settlement offer if you wish to avoid a court hearing.

If you and the plaintiff reach a settlement before the hearing, obtain *AOC Form 199-Small Claims Settlement Agreement* from the Circuit Court Clerk. Complete and sign the settlement agreement form and have the plaintiff sign it too. Give the settlement agreement to the Circuit Court Clerk for filing. Find out from the clerk whether you and the plaintiff are required to appear in court when the settlement agreement is filed prior to your hearing. If the judge approves the settlement agreement, it becomes legally enforceable.

- b. **Defend Your Case in Court.** The hearing is informal. The judge will ask you to respond to the plaintiff's complaint against you. Keep your statement as short as possible without neglecting important facts. Even though you are familiar with the case, the judge is not; therefore, it is important to state everything as clearly as possible and support your statements with evidence. The judge is only concerned with the facts relevant to the case.

When you go to court, take originals (or copies if you do not have originals), of contracts, letters, receipts, canceled checks, leases, estimates, police reports, photographs, actual damaged goods or other evidence. The type of evidence you need depends upon the case. You must present evidence to prove every point in your defense.

- c. **File a Counter-claim.** If you believe the plaintiff owes you money or personal property related to the same dispute involved in the lawsuit filed against you, you may choose to file a counter-claim. To file a counter-claim:

- (1) Go to the Circuit Court Clerk's office at least one (1) week before the court date and obtain *AOC Form 185-Small Claims Counter-claim*.
- (2) At least five (5) days before the court date, return the completed form to the Circuit Court Clerk's office for filing.
- (3) It is **your responsibility** to deliver a copy of the counter-claim to the plaintiff.
- (4) There is no filing fee, unless the amount of your counter-claim exceeds \$1,500.

If the counter-claim exceeds \$1,500, the case will be transferred by the clerk from the Small Claims Division to the Civil Division of District Court. **You will be charged an additional filing fee to transfer the case.**

The procedures in the Civil Division of District Court are more formal than in the Small Claims Division. You may need to hire an attorney to handle your counter-claim for you.

- d. **Request a Jury Trial.** You may request a jury trial if your counter-claim is \$250.00 or more. Notify the Circuit Court Clerk that you want a jury trial at least seven (7) days before the court date. The case will be transferred by the clerk from the Small Claims Division to the Civil Division of District Court for a jury trial. **You will be charged an additional fee.** You may need to hire an attorney to handle the trial before a jury.

### **APPEAL OF A SMALL CLAIMS CASE**

1. If you disagree with the judge's decision, you can appeal the case. A Notice of Appeal must be filed with the Circuit Court Clerk to appeal the case to Circuit Court. **A filing fee for the appeal is required.**

New evidence will not be heard. The Circuit Judge will only review the record developed in the Small Claims Division to determine if the law was applied correctly. **You should not appeal just because you did not win the suit.**

An appeal is complicated. You may need to seek the advice of an attorney to help you decide if you have grounds for an appeal. If you lose, you must still pay the original judgment plus any court costs the Circuit Judge may order. Further, if you hire an attorney to file the appeal for you, you will be responsible for attorney fees.

2. **Filing the Appeal.** If you decide to appeal the judge’s ruling in your case, you must file a Notice of Appeal.
  - a. Deliver the Notice of Appeal to the Circuit Court Clerk for filing in the Small Claims Division. This must be done **within ten (10) days from the date the small claims judgment was stamped “ENTERED.”**
  - b. You must file a Statement of Appeal in the Circuit Court case **within 30 days of filing your Notice of Appeal.** It is your responsibility to deliver a copy of the signed Statement of Appeal to the opposing party. The Statement of Appeal must contain the following information:
    1. You may request an oral argument if you want the Circuit Judge to hear your appeal in person, instead of submitting a written argument. You will be notified of the time and place to appear if your request for oral argument is granted.
    2. Only include legal issues for consideration by the judge. The small claims case will not be tried again. The judge will review the case file to determine if the law was applied correctly.
    3. Include a fair and accurate summary of the evidence heard by the judge in the small claims case. New evidence cannot be submitted in your appeal.
    4. Explain why you believe the District Judge made an error in the small claims judgment.
    5. Include a statement of the relief (compensation) to which you believe you are entitled.

3. **The time limits for filing the Notice of Appeal and Statement of Appeal must be followed.** The Notice of Appeal and Statement of Appeal must be filed with the Circuit Court Clerk in the same county where the small claims action was filed and heard. There are **no forms** for the Notice of Appeal or the Statement of Appeal. You must prepare these yourself or you may choose to hire an attorney to prepare them for you.

# **POST-JUDGMENT COLLECTIONS**

## JUDGMENT IN A SMALL CLAIMS CASE

1. A **judgment** in a small claims case is a court order that is legally enforceable. It entitles a winning party to receive money awarded by the court. The judge may order the losing party to pay the winning party a sum of money or to fix any damaged goods. The judge may give the losing party additional time to satisfy the judgment.
2. **Judgment Not Paid by the Date Due.** If the losing party fails to pay the judgment ordered by the court within ten (10) days of the due date, additional action may be necessary. First, the winning party should contact the losing party and attempt to collect the judgment. This will save time and money, in addition to avoiding the complexity of post-judgment collection procedures. If the losing party refuses to pay the amount ordered by the court, you may wish to take further steps to collect the judgment. Although a judgment is legally enforceable, **you are responsible** for taking any additional action necessary to collect the money. **The Circuit Court Clerk's office is prohibited by law from giving you legal advice.**
3. There are three post-judgment collection procedures you may use to collect your judgment:
  - a. **garnishment** of the losing party's wages or bank account(s);
  - b. **execution**, which means seizure of property; or
  - c. **judgment lien** which affects property.

Garnishments, executions and judgment liens can be difficult and hard to pursue. You may need to consult an attorney to assist you with these procedures.

4. **Identifying the Losing Party's Assets.** In order to legally enforce the judgment, you must know if the losing party owns any property, such as land or an automobile, which can be seized, or if they have a bank account or a salary from an employer which can be garnished. If you do not know this information, you may serve the losing party with written questions (called interrogatories) to find out what you need to know.

- a. Ask the Circuit Court Clerk for *AOC Form 197-Small Claims Post-Judgment Interrogatories*. This form contains basic questions to assist you in obtaining information about the losing party's assets. You may add up to 15 additional questions. These questions are for your use and benefit and are **not** to be filed with the clerk. **The clerk cannot assist you with writing any additional questions.**
- b. Send the interrogatories form and any additional questions to the losing party. Keep a copy for yourself. In order to insure the losing party receives the interrogatories, you may want to send them by certified mail. The losing party must answer the questions under oath and return a copy of the answers to you within 30 days after receiving the questions.
- c. If the losing party fails to answer the questions within 30 days, you may file a written motion requesting the judge to issue an order requiring the losing party to answer your questions. *AOC Form 198-Small Claims Post-Judgment Motion/Order Requiring Losing Party To Answer Interrogatories* may be obtained from the Circuit Court Clerk's office for this purpose. **The clerk cannot assist you in preparing the motion.**

## GARNISHMENT

1. Garnishment is a procedure whereby the winning party may obtain money which belongs to the losing party but is in the hands of a third party. There are two types of garnishment:
  - a. **wage garnishment** - example: money due the losing party as wages from employment; and
  - b. **non-wage garnishment** - example: money the losing party may have in a bank account.
2. In order to have a garnishment issued, follow the court's order specifying when a garnishment may be issued. If the court order does not specify a date when the garnishment may be issued, you must wait ten (10) days from the "ENTERED" date stamped on the order. To have the garnishment issued, you must file an affidavit. You may obtain the appropriate form to file the affidavit and have

the garnishment issued from the Circuit Court Clerk's office. **There is a fee to have the garnishment issued.**

3. When you file the affidavit for garnishment, you will receive *AOC Form 150.1-Order of Garnishment (Non-Wage)* from the clerk. This order must be served on any person, corporation or business (**the garnishee**) who is holding the losing party's money. The garnishee may be a bank or an employer.
4. You may have the order of garnishment served by the sheriff or sent by first class or certified mail. The garnishment fee and sheriff's fee or mailing costs may be recoverable as costs and should be added to the amount requested in the affidavit and order of garnishment.
5. The garnishee has 20 days after being served with the garnishment to file an answer to the garnishment. The **garnishee** may answer by paying the money owed, or the **losing party** may file *AOC Form 150.2-Affidavit to Challenge Garnishment*, if he/she contests the garnishment.
6. If the garnishee does not answer the garnishment within 20 days, you may file a motion asking the judge to require the garnishee to appear in court. Check with the clerk for a date and time your motion can be heard. The date and time must be included in the motion and a copy must be sent to the garnishee. There is **no form** to use in filing this motion. You must prepare it yourself or hire an attorney to file it for you.
7. If the judge issues an order for the garnishee to appear in court, you can ask the garnishee why the garnishment was not answered and what assets of the losing party the garnishee holds. If the garnishee fails to appear after being ordered to do so by the judge, you may ask the judge to issue an order for the garnishee's arrest.
8. The garnishee is required to pay all of the money held for the losing party, up to the amount of your judgment, plus costs, **except any money the garnishee proves is exempt from garnishment**. An example of money exempted from garnishment may include money received for support of dependent children and benefits

received by reason of age, illness, disability, or length of service. The garnishee may not be holding enough of the losing party's money to pay your judgment and costs in full. Any money the garnishee is holding will be paid and applied toward your judgment, with the exception of those funds the garnishee proves are exempt.

9. **The order of garnishment stays in effect until the judgment is paid in full.** If you are not represented by an attorney, the garnishee will forward funds to the Circuit Court Clerk. The clerk is required to hold the funds 15 days before paying the funds to you.
10. When your judgment is almost paid in full, obtain *AOC Form 150.5-Affidavit and Supplemental Order of Wage Garnishment* from the Circuit Court Clerk. Fill out the form and take it to the circuit clerk's office for filing. Have the Supplemental Order of Wage Garnishment served on the garnishee by the sheriff or you may send it by first class or certified mail. This will let the garnishee know when to stop paying you money held for the losing party.
11. If you think the garnishee is withholding money that is due you, or if the garnishee fails to answer to your satisfaction, you may file a separate lawsuit which would not be filed in the small claims case. You may want to seek legal advice in pursuing this.
12. **Money of Losing Party in Another County.** If you discover money owed to the losing party is being held in a county other than the one in which the judgment was entered, you may send the order of garnishment to the garnishee in the other county. You may have the sheriff of that county serve the garnishee or you may mail the order of garnishment to the garnishee by certified mail or first class mail. The garnishee will have 20 days to file an answer or to send the funds to the court where your judgment was entered.
13. **How to Obtain Out-Of-State Wages.** If the losing party works for an employer located outside Kentucky, you may garnishee wages only if the employer is subject to process in Kentucky. Call the Secretary of State's Office at (502) 564-7330 to find out the name and address of the employer's process agent in Kentucky. Send the order of garnishment to the process agent.

**No employer can discharge an employee because the employee's wages are garnished for any one indebtedness. KRS 427.140.**

## **EXECUTION**

1. Execution is a procedure which commands the sheriff to seize property of the losing party which can be sold and to apply the money from the sale to your judgment.
2. An execution may be issued ten (10) days after the date on the "ENTERED" stamp on the judgment unless the judge has ordered otherwise. Obtain *AOC Form 135-Execution Form* from the Circuit Court Clerk's Office. Complete the form and take it, for filing, to the Circuit Clerk's Office in the county where your judgment was obtained. **A fee will be charged for the issuance of the execution.** Take the execution to the sheriff who will "execute" it by searching within the county for property of the losing party.
3. If you know there is no property in the county where the judgment was obtained, file an affidavit with the Circuit Clerk stating there is insufficient property in that county, and request that an execution be issued for the county where you think the debtor has property. Send the execution to the sheriff of the county where the real estate is located.
4. Kentucky law states that the defendant's personal property is subject to execution first before any real estate may be seized. KRS 426.130. Personal property includes items such as household goods, tools, equipment, and automobiles. List both personal property and real estate on the execution form. In the event there is insufficient personal property to satisfy your judgment, the sheriff can execute on the real estate.
5. The sheriff may require you to post a bond to pay for any damages which might be incurred in the event the attachment is proved wrongful.
6. The sheriff must make a return within 60 days of the issuance of the execution. If non-exempt property belonging to the losing party is found by the sheriff, this fact will be noted on the sheriff's return. The losing party has ten (10) days from the date of service

of the execution to challenge the execution by filing with the Circuit Court Clerk *AOC Form 135.1-Affidavit to Challenge Execution*.

7. Any payment made by the debtor to the sheriff will be applied toward payment of your judgment.
8. If the debt still remains, you may need to have the executed property sold in order to collect your debt. Fourteen (14) days after service of the execution, you may obtain from the Circuit Court Clerk, *AOC Form 140-Order for Sale*.
9. **Problems in Execution.** Some items **are exempt** from execution up to a certain value. Examples:
  - a. household furnishing, jewelry, and personal clothing up to \$3,000 in value (KRS 427.050);
  - b. farm tools, equipment, livestock up to \$3,000 in value (KRS 427.010);
  - c. one automobile up to \$2,500 in value (KRS 427.030);
  - d. trade tools up to \$300 in value (KRS 427.030);
  - e. professional library and office equipment of ministers, attorneys, physicians, surgeons, chiropractors, dentists, and veterinarians up to \$1,000 (KRS 427.040);
  - f. the losing party's real estate where he/she lives up to \$5,000 total (KRS 427.060);
  - g. insurance benefits (KRS 427.110); and
  - h. police and fire fighters' pensions from first through fourth class cities (KRS 427.120 and 427.125).

## **DIFFICULTY IN COLLECTING YOUR JUDGMENT**

1. There are instances when a losing party has no job or other income and no assets that may be seized. This type of individual is considered “judgment proof” and there is no way to immediately collect your judgment.
2. It may be difficult to collect money from “fly-by-night” businesses, firms located outside of Kentucky, companies no longer in business, or people who have filed bankruptcy.
3. If the losing party moves and leaves no forwarding address, you may be unable to collect your judgment due to the fact that the defendant cannot be located.

**Small claims judgments are enforceable for 15 years.**

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