

Florida Small Claims Court

DISCLAIMER: The information contained in this fact sheet is of a general nature and is provided for your assistance. It is not intended as legal advice and is not a substitute for legal counsel. If you have any questions as to how the law affects you or your legal rights, contact your civilian attorney or the Eglin AFB Legal Office at (850) 882-4611 for an appointment with a licensed attorney.

THE BASICS

What is Small Claims Court?

A small claims case is a legal action filed in county court to settle minor legal disputes among parties where the dollar amount involved is \$5,000.00 or less, excluding costs, interest and attorney fees.

Who may sue?

Any person(s) eighteen years or older or any individual doing business as a company may file a small claims case. A parent or guardian may file on behalf of a minor child.

I'm bring a lawsuit as or on behalf of a company/business/etc. What do I do?

There are very specific rules for your situation, which are beyond the scope of this guide. The Clerk of Court can help you, but some good general information is available at these two websites:

- <http://www.okaloosaclerk.com/index.php/court-services/34-small-claims>
- [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/5E3D51AF15EE8DCD85256B29004BFA62/\\$FILE/Small%20Claims.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/5E3D51AF15EE8DCD85256B29004BFA62/$FILE/Small%20Claims.pdf?OpenElement)

I've been sued. Now what?

The Florida Bar has an excellent online pamphlet covering this issue, "Small claims: The who, what, where and why of collection lawsuits." You can find it

here: <http://www.floridabar.org/tfb/TFBConsum.nsf/0a92a6dc28e76ae58525700a005d0d53/eeb823f77975d746852579ba006b9edd!OpenDocument>

If you believe that the lawsuit covers conduct that was within your scope of employment with the United States, then you should also review AFI 51-301, *Civil Litigation*, which describes your rights and obligations. You may be entitled to representation by a Department of Justice attorney and may be provided an attorney at the Eglin Law Center to assist you in preparing your request for representation. There may also be notification requirements, i.e., reporting the matter to higher command.

Is a lawyer required?

No. A lawyer is not required to file a small claims case. Small Claims Court is a "People's Court," where you advocate for yourself. Unlike the television shows, either party may choose to hire a lawyer and have them represent them, but it is not necessary. (A lawyer may be necessary to assist you in collecting any monetary judgment in your favor.) The decision to obtain legal representation (to "get an attorney") depends upon many factors, so while a lawyer is not required, your circumstances may make a lawyer desirable.

FILING A CLAIM

How do I file a claim?

1. Identify the appropriate county court for filing your case, i.e., the Venue. Under Florida law, the proper location (or venue) for filing your case may be one of the following:
 - Where the contract was entered into.
 - Where the event giving rise to the suit occurred.
 - Where any one or more of the defendants sued reside.
 - If the suit is to recover property or to foreclose a lien, where the property is located.
 - If the suit is on an unsecured promissory note, where the note is signed or where the maker resides.
 - Any location agreed to in a contract.
 - In an action for money due, if there is no agreement as to where suit may be filed, where payment is to be made.

In plain terms, if your suit involves property (e.g., a rental home) that is in Okaloosa County or an accident that occurred there, you may file in Okaloosa County.

2. Visit the Clerk of Court's website for the county where you intend to file suit. For Okaloosa County, the website is <http://www.okaloosaclerk.com/index.php/court-services/34-small-claims>. Many Florida courts have detailed packages containing all of the information you will need, the forms that are required, and any county-specific instructions for filing your claim. Follow them precisely. The Clerk of Court is the court's gatekeeper: nothing gets to the judge without being approved by the Clerk first. Learn and follow their rules to the best of your ability. If you are confused or have a question, ask the Clerk. This is a situation where "asking permission" is better than "asking forgiveness." After all, one of the Clerk's duties is to "assist in the preparation of a statement of claim and other papers to be filed in the action at the request of any litigant." In other words, the Clerk of Court can help, if you ask them.

3. In Okaloosa County, the Clerk's website has a Q&A similar to this one. It also includes a number of linked documents. Begin by reviewing the Q&A and then downloading the Small Claims Information Brochure and the Statement of Claim. (These documents are also available at the Clerk's office, for a small fee.)

NOTE: The Florida State Bar has the complete Florida Small Claims Rules available online:
[http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/5E3D51AF15EE8DCD85256B29004BFA62/\\$FILE/Small%20Claims.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/5E3D51AF15EE8DCD85256B29004BFA62/$FILE/Small%20Claims.pdf?OpenElement)

We strongly encourage you to read at least pages 6-22, which will provide you with a very thorough preparation for your day in court. (You do not need to read any of the "Court Commentary" or "Committee Notes" on those pages, which usually highlight how the rule has changed over the years.) Because these Rules are very detailed, we recommend reading the resources listed above first so that you have the big picture before getting into the specifics included in the Rules.

4. Following the Clerk of Court's instructions, fill out the Statement of Claim. In Okaloosa County, the "Small Claims Information Brochure" has very detailed instructions. Several that tend to trip up plaintiffs are:
 - The Statement of Claim form must be either typed or printed with a ballpoint pen to ensure legibility on all copies.
 - You must provide a copy for filing and a copy of any supporting documents for EACH defendant you are naming in your lawsuit.
 - There are special rules if you are naming a corporation as a Defendant or if your claim involves YOUR

insurance company.

- DO NOT SIGN THE STATEMENT OF CLAIM UNTIL EITHER A NOTARY OR THE CLERK TELLS YOU TO SIGN. Your signature must be notarized. That can be done by any notary public in Florida or, for a fee of \$3.50, by the Clerk of Court.

5. File the documents in person or by mail. At that time, you must pay the filing fee, as well as the fees to serve the summons (i.e., the certified mail fee or the Sheriff Service fee). You may pay the fees by money order, cashier's check, or credit card. If you are filing in person, you may pay with cash. Here are some of the fees. (The complete "Latest Fee Filing Schedule" is available on the Okaloosa Clerk of Court's website.)

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|---|----------|
| Claims less than \$100.00 | \$55.00 |
| Claims of \$100.00 or more but not more than \$500 | \$80.00 |
| Claims of more than \$500 but not more than \$2,500 | \$175.00 |
| Claims more than \$2,500 but not more than \$5,000 | \$300.00 |

If possible, we recommend filing in person at the Clerk of Court's office. This will ensure that you file your suit correctly and do not neglect any fees or other requirements.

6. Before you leave the courthouse, ensure with the Clerk that either (a) there is nothing further you need to do at the time and service (notifying the Defendant(s) about the claim) will be handled or (b) what your options for serving the summons are.

Can I have a jury trial?

Yes. Although most small claims cases are heard and decided by the judge, either party may request a jury trial. The Plaintiff has to make a written demand for a jury trial when they file their suit with the Clerk of Court. The Defendant has to make a written demand within 5 days after service of notice or at the Pretrial Conference. If you do not request a jury trial at the appropriate time, you waive your right to request one.

YOUR DAY(S) IN COURT

What should I know about appearing in court?

Florida's small claims courts are intended to be less formal than normal trials. However informal, they must still be conducted with a "decorum befitting a court of justice."

Interacting with the Judge. When addressing the judge, the most appropriate term is "Your Honor," e.g., "Yes, Your Honor." "Sir" or "Ma'am" is also acceptable, particularly in military communities. Unless the circumstances dictate otherwise or the judge or clerk tell you otherwise, you should stand when addressing the judge.

If the judge begins speaking while you are speaking, stop talking. If the judge interrupts you to ask a question, answer their question as clearly as you can then proceed with your presentation.

Try your best to direct your comments to the judge and not the other party. Remember, it is the judge who must be convinced of the merits of your case, not the other party. You only need to convince the judge, so try and focus on talking to them. Talking directly to the judge also reduces the risk of becoming emotional or argumentative, which can reflect poorly on you.

There will probably not be any reason for you to approach the judge. If you believe it is necessary, ask for permission.

For example, “Your Honor, may I approach and hand you a copy of this document?” Generally speaking, the judge will ask the bailiff or clerk to collect any documents you have and they will hand them to the judge. As a result, the more common situation is:

You: “Your Honor, I have the contract, if you would like to see it.”

Judge: “Yes. bailiff [will you take it and bring it to me]?” (The bailiff takes it.)

When in doubt, a good rule of thumb is to treat any appearance before a judge as though you were meeting with an O-6 or above for the first time.

Attire/Wearing Military Uniform. Unless you are participating in an official capacity (and you will never appear as a plaintiff in your official capacity), Air Force military personnel MAY NOT wear their military uniform in court. (AFI 51-301, paragraph 9.16.3). You should dress conservatively and business casual, at a minimum.

Advance Scouting. You may want to attend a small claims court proceeding before your day in court, so that you have a chance to see how the process works in advance. The Clerk of Court can tell you when the next proceeding will be.

What should I know about the Pretrial Conference?

- *When is it?* The Pretrial Conference will be scheduled within 2 months from the date you file your claim. In Okaloosa County, Pretrial Conferences are held twice each month.
- *Who has to be there?* Appearance at the Pretrial Conference is **MANDATORY**. If you fail to attend, your case will be dismissed for lack of prosecution. If the Defendant fails to appear, the Court may issue a judgment against them.
- *What is it for?* The purpose of the Pretrial Conference is to record your appearance, determine if you admit all or part of the claim, help the court determine the nature of the case, and set the case for a Final Hearing if the matter cannot be resolved. In Okaloosa County, if the parties disagree on any aspect of the claim, the judge will ask the parties if they would like to attempt mediation (offered the same day, in the same building.) At mediation, the parties will have the chance to present their sides in a mediation under the guidance of an experienced mediator with the goal of reaching a mutually agreeable settlement of the disputed issues. If the parties agree, they will sign a stipulation describing their agreement.
- *What if the defendant is not served the summons?* If the defendant is not served the summons, the Pretrial Conference will be cancelled. It will be rescheduled if you provide additional information so that the summons can be served.

Benefits of Mediation

Florida courts require the parties attempt mediation first because they want to give the parties one final chance to resolve the issue themselves. There are many benefits to mediation. Among those cited by the Okaloosa County Clerk are:

- It is economical.
- Settlement is viewed as fair by both parties.
- There is only one court meeting.
- You do not need to subpoena witnesses or evidence and depend on their presence at trial.
- It protects privacy and avoids the publicity of a trial.
- It allows debtors to arrange repayment plans; avoid a judgment; and preserve their credit reputation.
- It preserves personal and business relationships.
- The parties remain in control and participate in a “win-win” solution.
- The agreement is final and the dispute is resolved.

NOTE: The decision whether to reach a settlement in mediation is up to you and the other party. There is no standard answer on whether it is better for someone in your particular circumstances to reach an agreement in mediation or proceed to trial. But there are some interesting statistics. As reported by the New York Times (7 Aug 2008), a study of civil trials (not just small claims cases) found that:

- The vast majority of cases (80-92%) settle and never proceed to trial.

- Of those that do go to trial,
 - 61% of the time, the plaintiff received less money at trial than the defendant offered as settlement, i.e., by rejecting the settlement offer, the plaintiff lost money.
 - 24% of the time, the plaintiff received more money than they had requested from the defendant.
 - 15% of the time, the plaintiff gets less than they asked for, but more than the defendant offered.

What happens at the Final Hearing?

The Final Hearing is a trial. The judge will give each party a chance to speak and, if necessary, present their evidence. After hearing the evidence, the judge will issue their decision. Depending on the complexity of your case and the issues involved, the judge may issue their verdict at that time or they may defer judgment until they have had the time to consider the case. In either case, a written judgment will be issued.

Basic Advice for Trial

The following constitutes some generic advice on best practices for presenting a case in court. You are the master of your own case and are responsible for deciding how you will present and prove your case.

If you have any witnesses or evidence that you believe is relevant (i.e., that will help the judge reach the right decision in the case), you must present it at the trial. The judge can only decide the case based on the evidence in front of them. The best evidence in the world is worthless if you do not have it on the day of trial. The same goes for witnesses. Attorneys often double- and triple-check with their witnesses to ensure they know about the trial date and will be there. Have a good contact number for any witness you wish to call. If the judge is permitting you to have a witness testify telephonically, call them on your cell phone before the trial starts to confirm that they are by their phone and ask them to remain there.

If do have any evidence, you should ensure that you have a copy of every document for each party as well as one for the judge. The best practice is to have a separate folder for each party. In the usual case, that means you have a folder for you, one for the other party, and one for the judge, each of which has a clean copy of every piece of evidence. That way, you can simply offer the entire folder the court and the other party.

The judge can assist any party not represented by an attorney with “courtroom decorum, order of presentation of material evidence, and handling private information,” but the judge cannot advise you on the law or act as your advocate. In other words, the judge cannot advise on what evidence or witnesses you should produce, but they can advise on the procedure for offering the evidence you have selected. Bottom line: the judge will ensure that the case is decided on the merits and not simply which party better understood courtroom procedure.

Which means that while the judge may help you identify the order in which you present your In presenting your case, there are several ways of organizing your evidence. Among the most common are chronologically (i.e., presenting the witnesses/evidence in chronological order) and the inverted pyramid (i.e., ordering your evidence from most to least important and presenting the most important first, regardless of chronology.) In deciding how to present your case, understand that while the judge will give you a fair opportunity, they expect you to respect their time.

Whatever you decide, it can be helpful for the judge if you briefly outline your presentation (i.e., do what every Air Force PowerPoint presentation does). For example, you can begin by presenting a brief (30 second or less) summary of your case then saying, “Your Honor, I have five documents (the rental agreement and four photos) that I would like you to consider as evidence and I intend to call two witnesses: my neighbor, Mrs. Smith, who saw the incident and my friend, Mr. Snuffy, who was with me when I met with the Defendant afterwards.”

Can I be reimbursed for court costs if it is determined I am entitled to money?

If the court determines that one of the parties is entitled to a monetary judgment, it will be stated in the judgment. This can include all court costs associated with bringing the claim. To protect yourself, you should ask for

reimbursement of costs in your Statement of Claim.

Where do I go for more information?

You can (and should) visit the following websites:

- <http://www.okaloosaclerk.com/index.php/court-services/34-small-claims>
- [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/5E3D51AF15EE8DCD85256B29004BFA62/\\$FILE/Small%20Claims.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/5E3D51AF15EE8DCD85256B29004BFA62/$FILE/Small%20Claims.pdf?OpenElement)

You can also get information in person here:

Clerk of Court
Okaloosa County Courthouse
Small Claims Division
101 E James Lee Blvd
Crestview, FL 32536
(850) 689-5000

Okaloosa County Courthouse Annex
1250 N. Eglin Pkwy
Shalimar, FL 32579
(850) 651-7200