

HOW TO USE THE SMALL CLAIMS DIVISION OF THE BATON ROUGE CITY COURT



Although this brochure seeks to simplify the law, it cannot cover every aspect and provision of the law, nor all the rules of this court. The Clerk's Office seeks to be helpful; however, it cannot provide legal advice. If you believe legal advice is necessary, you must contact a lawyer to provide this service.

JUDGES AND COURT/CLERK PERSONNEL ARE NOT PERMITTED TO GIVE LEGAL ADVICE.

WHAT IS SMALL CLAIMS COURT?

Small Claims Court (S.C.C.) is a part of the Civil Division of the Baton Rouge City Court and was established pursuant to Louisiana Revised Statutes 13:5200-5212. You may sue to resolve minor civil disputes and to recover claims that do not exceed \$5,000.00. A claim, generally speaking, asserts a legal right you may have.

You may use the S.C.C. to sue someone who lives within the city limits of Baton Rouge. You may also sue in S.C.C. if you were personally injured or your property was damaged by actions of another party within the city limits of Baton Rouge, regardless where the party causing your injury may live. Otherwise, the Court's authority to handle cases affecting defendants who do not reside within the Baton Rouge city limits depends on numerous factors that warrant professional legal advice.

You must be EIGHTEEN YEARS OF AGE to file a case in S.C.C., but minors and incompetents may sue through a parent or guardian. A duly authorized officer, shareholder, agent, representative, 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. R.S. 37:212C).

The ordinary rules of evidence do not apply in S.C.C. If you lose in S.C.C., you have no right to appeal the Court's decision.

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

You may sue if you believe someone owes you money, or something of monetary value. 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 that you are owed;
- You seek possession of personal property that 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/property;
- Suits against a state agency, parish, municipality, or other political subdivision;
- Suits against a public official while performing official duties;
- Suits seeking eviction of tenants;
- Suits where more than ten (10) parties are joined as plaintiffs in the same action;
- Class action suits (a suit brought by one or more persons on behalf of a larger group of people).

HOW MUCH SHOULD YOU SUE FOR?

You can only sue for the money which your loss or damage caused you. For example, if the refrigerator you just bought for \$350 does not work and the store refuses to repair it or refund your money, then you sue for \$350 plus judicial interest and all court costs.

On a promissory note or open account, you sue for the current balance due, plus interest and all court costs.

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

PREPARING TO FILE YOUR CLAIM:

General Information:

Your claim will be filed with:

Baton Rouge City Court
Small Claims/Civil Division
233 St. Louis Street, Room 251
Baton Rouge, LA 70802
Phone: (225) 389-3017

(Some forms and additional information can be found at www.brgov.com/dept/citycourt.)

A filing fee must be paid in order to file a Small Claim Suit and the current costs can be found in the Civil Court Costs Schedule. Filing fees may be made by cash, cashier's check, money order, personal check payable to Baton Rouge City Court, or by Mastercard, Visa, Discover Card, or American Express. When you provide a check as payment, you authorize Baton Rouge City Court to make a one-time electronic fund transfer (EFT) from your account. An EFT may debit your account that same day. Additional fees are sometimes required for service on the defendant (see information below regarding service). All court costs are normally assessed against the party that ultimately loses the lawsuit, but may be assessed against either party. If you cancel or dismiss a suit in Small Claims Court, there are no refunds.

You Must Identify the Proper Party to Sue:

You must determine the proper legal name and complete **physical** address of the party that you wish to sue. This party is called the "DEFENDANT." You will be the "PLAINTIFF." It is the responsibility of the plaintiff to have the correct name and complete **physical** address of the person being sued.

It is extremely important that you sue the correct person or company. Before you file your claim, make sure you know who you should sue, so that your judgment will be enforceable if you prevail.

If you initially sue the incorrect party and obtain an Award and subsequent Judgment against that party, the Judgment may not be collectible. Please review the following instructions.

If a business is being sued, call the Corporation Division of the Louisiana Secretary of State at (225) 925-4704 to find out if the business is incorporated or if it is simply using a "trade name" and is not incorporated.

If the business is incorporated, you should request the name and address of the REGISTERED AGENT for the corporation. The agent 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, because this address is the corporation's "residence."

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 at (225) 389-3278, or by going to 222 St. Louis Street, Room 411, Baton Rouge, LA.

If you are suing someone as a result of an automobile accident and 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 Motor Vehicles Registration, 7701 Independence Blvd., Baton Rouge, LA and request this information. A fee will be assessed.

You may wish to file in the suit record copies of written evidence that would help support your claim in Court, such as:

Contracts	Paid Bill	Letters/Written Records
Leases	Canceled Checks	Repair Estimates (2 or more)

Bring to court any document or other evidence that you believe will be helpful in proving your case at the time of your trial. If you wish to keep a copy of any documents you use as evidence, you must make your copies prior to coming to Court.

You Must Complete the Appropriate Form(s):

You must first complete a form entitled "Statement of Claim and Citation." This form is available in the Small Claims Division of Baton Rouge City Court and is also available online. If using the online form, please complete all shaded areas and make sure you sign all pages. Either form will require you to provide the following information.

- Your name, physical address, and daytime telephone number;
- The correct name and complete physical address of the party that you are suing. If it is a corporation, you will need the proper name, complete physical address and the registered agent;
- A simple, but complete statement of why you are suing. This statement should include:
 - The dates, places, and person(s) that relate to your claim;
 - The total amount of money you are trying to recover with an itemization and explanation. *(If you receive a Judgment in your favor, you can claim interest on the sum of money owed from the date that you originally filed suit until the money is actually paid. This amount is known as "judicial interest", and the rate is fixed by law. A clerk in the Small Claims Division can provide further information when/if a Judgment is rendered in your favor.)*

Information for You to Know Regarding Service:

In Small Claims matters, the party or parties you are suing must officially receive notice that they are being sued. Service of citation or other processes shall be by certified mail, with return receipt requested, unless you request that service be made by the appropriate law enforcement agency and you pay the appropriate service fee, if there is any. Service fees are in addition to the required Small Claims filing fee.

If the defendant is served within the Baton Rouge city limits and you request that service be made by a law enforcement agency rather than by certified mail, then service will be made by the City Constable's Office. Service of Small Claim citations within the City limits requires a \$10.00 service fee, in addition to the required filing fee.

If the defendant is to be served outside of the city limits, but within East Baton Rouge Parish, you must provide a check made payable to the EBRP Sheriff for the cost of service. The cost of service by the East Baton Rouge Parish Sheriff's Office varies according to zip code. A clerk in the Small Claims Division can give you the service fee amount.

If the defendant is to be served in another parish, a clerk in the Small Claims Division can give you the service fee amount and tell you who to make your check payable to.

FILING YOUR CLAIM:

You must file your claim in person, by mail, or by fax:

IN PERSON:

Take your completed and signed "Statement of Claim and Citation" form to the Small Claims Division of Baton Rouge City Court and pay the required filing fee. (Refer to the current Civil Court Costs Schedule.) Your service fee, if applicable, must also be paid at this time.

BY MAIL:

Your completed and signed "Statement of Claim and Citation" form, filing fee, and service fee (if applicable), may be mailed to:

Baton Rouge City Court
Attn: Small Claims/Civil Division, Room 251
P.O. Box 3438
Baton Rouge, LA 70821

BY FAX:

Pursuant to Louisiana Revised Statute 13:850 any paper in a civil action may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received and a receipt of transmission has been transmitted to the sender by the Clerk of Court. The facsimile when filed has the same force and effect as the original. Within seven (7) days, exclusive of legal holidays, after the clerk of court has received the transmission, the party filing the document SHALL forward the following to the clerk:

1. the original signed document;
2. the applicable filing fee, if any, and;
3. a transmission fee of \$5.00.

Failure to comply with these requirements will result in the fax filing having no force or effect. Fax filings may be faxed to (225) 389-5260.

WHAT HAPPENS AFTER YOU FILE SUIT?

Service By Certified Mail:

If service is being made by certified mail, the Clerk's Office will mail the defendant a copy of your "Statement of Claim and Citation" by certified mail, return receipt requested, to the address you provide. This mailing will include an "Attention Sheet", which informs the defendant that he/she has been sued and that they have ten (10) calendar days (inclusive of holidays and weekends) in which to answer the lawsuit. During this ten (10) day period of time you, the plaintiff, cannot take any action. The Clerk's Office will mail you the service information upon receipt of the postal return.

Service By the City Constable or Sheriff's Office:

If you request that the defendant be served the Clerk's Office will forward the copy of your "Statement of Claim and Citation", which includes an "Attention Sheet" to the appropriate law enforcement agency for "service" (or delivery) on the defendant. This "Attention Sheet" informs the defendant that he/she has been sued and that they have ten (10) calendar days (inclusive of holidays and weekends) in which to answer the lawsuit. During this ten (10) days period of time you, the plaintiff, cannot take any action. The Clerk's Office will mail you the service information upon receipt from the Constable and/or Sheriff's Office.

If the Constable/Sheriff makes a return certifying that they are unable to make service, you may request a Motion to Appoint a Private Process Server. This form is available in the Civil Division, as well as online. This server may be any person who is not a party in the suit, over the age of majority, and residing within the State. **It is your responsibility to name this person.** Service of process made in this manner must be proved like any other fact in the case.

ONCE DEFENDANT IS SERVED/CONFIRMING A DEFAULT JUDGMENT:

You may call the Small Claims/Civil Division at (225) 389-3017 on the 11th day after the defendant has been served to find out if the defendant has filed an "ANSWER."

- If the defendant HAS NOT filed an "Answer", your next step is to "confirm a default judgment." You may obtain the necessary default judgment form(s) from the Clerk's Office and return them by mail, or you may confirm your default judgment in open court on Monday, Tuesday, Thursday, or Friday. Should you choose to appear in open court you will need to check in at the Civil Office, Room 251, no later than 8:30 a.m., so that your matter may be pulled and forwarded to the Court. Bring all necessary documents and witnesses with you, as you will have to prove your case to the judge. **Note: After the expiration of the ten (10) day period, the defendant can still file an Answer at any time prior to your obtaining a judgment.**

- If the defendant HAS filed an “Answer” or other pleadings contesting the claim, you must write the Clerk of Court and ask for a trial date. This action may be done in letter form. (Attorneys must observe the local Rules of Court.)

Defendant’s Right to Transfer the Matter to the Civil Docket:

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 (10) 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 by 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 an attorney’s participation. Once a matter has been transferred from Small Claims it cannot be transferred back. In such cases, you should be alerted to the advisability of hiring an attorney.

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. There is a \$50.00 fee to transfer a matter to the regular civil docket. A transfer would enable you to preserve your right to appeal any unfavorable judgment.

If you decide to contest the case over any issue, you **SHOULD** file your Answer **IN WRITING** with the Clerk’s Office within the ten (10) day period provided by law. **IF YOU DO NOT DO SO, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU.** This action 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. **IF TEN (10) DAYS HAVE PASSED BUT THE PLAINTIFF HAS NOT OBTAINED A JUDGMENT, YOU MAY STILL FILE AN ANSWER.**

Possible defenses include:

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

A copy of your written Answer must be provided to the plaintiff. You can make a written request to the Clerk of Court for the plaintiff to be served, or you can mail a copy of your Answer directly to the plaintiff. If service is requested, it is your responsibility to provide the Clerk with the name and

complete physical address of the plaintiff for service. If mailed, you must file a certificate of service with the Court stating that you mailed a copy of your Answer to the plaintiff.

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. You must pay a filing fee in accordance with the current Civil Court Costs Schedule. The Clerk’s Office can provide you with the appropriate service fee amount, if applicable. (Refer to the section “Information for You to Know Regarding Service” for additional service information.)

HOW DO I PREPARE FOR TRIAL?

As plaintiff, you have the burden of proving your case before the Judge at a trial by presenting the most convincing evidence. This process is a balancing test by which the Judge weighs the probabilities of accuracy of each party’s respective claim. As the plaintiff, your evidence must be greater (at least 51%) for you to win your case. The following information may be helpful in preparing for your trial:

1. Arrange for WITNESSES. These are people who saw what happened or have personal knowledge that might help your case. Have them appear in Court on your trial date. If a witness will not agree to appear voluntarily, you may make a written request asking the Clerk to issue a SUBPOENA commanding their appearance. An advance subpoena fee of \$20.00 (additional \$40.00 deposit for each law enforcement officer) will be assessed for each subpoena issued. If a witness is not subpoenaed and does not appear at the trial, his/her 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.
2. Gather all the evidence that relates to your claim or your defense if you are suing, or being sued. This evidence 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 YOUR TRIAL DATE, unless it has previously been filed in the suit record. If you wish to keep a copy of any documents that you use as evidence, you must make your copies prior to coming to Court.
3. 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 your trial will probably be your only opportunity to present evidence. If a settlement is reached prior to trial, notify the Clerk’s Office in writing IMMEDIATELY, so that your case may be removed from the Court’s docket. If time does not permit written notification then you will need to telephone the office of the judge handling your case to inform them of the settlement. 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 a continuance. Requests for a continuance, absent extraordinary circumstances, must be filed not less than seven (7) days prior to the scheduled court date. In addition, requests for a continuance, that do not reflect the consent of the opposing party are not automatically granted and must be supported by good cause.

WHAT HAPPENS AT TRIAL?

NOTE: Proper attire is required for Court appearances. No tank tops, muscle shirts, cutoffs, shorts, halter tops, or clothing that exposes the midriff. No gum chewing allowed in Court. NO CELL PHONES allowed in the building.

1. Arrive early and bring all of your evidence with you. Remember you are responsible for making all necessary copies, as this will not be done by the Court. Any evidence you enter will be retained by the Court and not returned to 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, which will result in your winning 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). Additionally, you may be asked to answer your opponent's questions. The procedure will be more relaxed and informal than an ordinary trial. The Judge may ask questions himself/herself in an 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 will take the matter "under advisement" in order to conduct research. In this instance, you will be notified of the decision by mail.
5. A Judgment rendered in Small Claims Court becomes final and executory three (3) 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.

NOTE: An arbitrator may be appointed by the Judge to hear your case. If so appointed, the Arbitrator's decision is final and binding. Should you have to pursue collection of the award you will need to file a Motion for Judgment Confirming Arbitrator Award. This form can be obtained from the Civil Division. After you have completed this form and filed it with the Civil Division your matter will be forwarded to the Judge for signature. **This step is only necessary if you have to pursue collection of your award.**

***I* F I WIN, HOW DO I COLLECT MY MONEY?**

1. 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.
2. 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 non-exempt property belonging to the defendant. Additional court fees are required for these actions, which, like other costs of court, are recoverable from the losing party. For assistance, you may contact an attorney or use one of the legal services listed on the last page of this pamphlet.
3. If you do not know of any assets belonging to the losing party that you could seize, you may request a "Judgment Debtor Examination" for an oral examination as to the existence and whereabouts of the defendant's assets. The advance court cost fee is \$70.00 for filing this action. You will be allowed to orally examine the defendant who will be under oath regarding his assets, employment, etc., at a place suitable for such examination, usually just outside the courtroom. This information may help you in finding other legal means for collecting on your Judgment.

***I* F I LOSE, MAY I DO ANYTHING?**

If you lost your case at trial you may try to get a new trial by the filing of a "Motion for New Trial." A new trial **is not** an appeal. 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, evidence important to his cause, which he/she could not, with due diligence, have obtained before or during the trial; or
- c. If the trial Judge believes there are good grounds therefor.

Time delays are important on the 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 within three (3) days after it is served on the losing party, if service is necessary under the law. The three days excludes weekends and holidays.

CHECKLIST

PLAINTIFF

1. Does 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 amount of money you seek to recover, date, and locations related to your claim.
5. Did you include copies of written evidence with your Statement of Claim and Citation?
6. Did you provide your complete name, address, phone number and signature?
7. Did you familiarize yourself with this guide?

DEFENDANT

1. Do you want to contact an attorney?
2. Do you wish to transfer the case to the regular Civil docket? You must file this request within ten (10) days.
3. Do you wish to contest claim? You must file a written Answer within ten (10) days or anytime prior to a default judgment being signed.

In your Answer, consider:

- Is this Court the proper court?
- Has the 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 file a "counterclaim" against the plaintiff?

SMALL CLAIMS SUPPORT GLOSSARY

agent	a person or party acting legally on behalf of another person, party, or corporation.
arbitrator	a licensed attorney who resolves disputes between parties.
defendant	the party or person who is being sued.
domiciliary service	when the properly addressed, certified mail return receipt reply form is signed at the residence by someone other than the defendant, then service shall be considered as domiciliary service.
due & diligent service	NO SERVICE. Service not made after a diligent search and inquiry.
garnishee	defendant's employer or someone who has money or property in his possession belonging to defendant, such as a bank where defendant has funds.
garnishment	a judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by the third party. A plaintiff initiates a garnishment action as a means of either prejudgment seizure or post judgment collection.
incorporated	formed into a legal corporation under applicable state law.
judgment debtor rule	a rule to show cause against a person whom a money judgment has been entered but not yet satisfied.
jurisdiction	is the <u>legal power</u> and authority of <u>a court to hear and determine an action</u> and to grant parties the relief to which they may be entitled.
personal service	when the properly addressed, certified mail return receipt reply form is signed by the addressee/defendant, then service shall be considered as personal service.
plaintiff	the party who is filing suit against another party.
seizure	the act or an instance of taking possession of a person or property by legal right or process. To forcibly take possession (of a person or property).
service of process	the act of presenting a copy of a legal document such as a Statement of Claim and Citation to a party by a duly authorized court officer, thereby putting the receiving party on legal notice of the action.
suit number	the number assigned to your lawsuit at the time of its filing by the Clerk of Court. (Any correspondence or other inquiry about your case should contain this number.)
tendered	when a properly addressed, certified mail return receipt reply form is returned and marked "refused" or "unclaimed" by the addressee, then service of process is regarded as tendered and shall be considered as domiciliary service.
venue	as opposed to jurisdiction, is merely the parish or city (physical location) in which an action or proceeding may be properly brought and tried. It relates to the geographical location where a case may be tried.

WHERE ELSE CAN I GO FOR INFORMATION?

Southeast Louisiana Legal Services
715 St. Ferdinand Street
Baton Rouge, LA 70802
Phone (225) 448-0080
Toll Free (855-512-3980)
www.slls.org

Lawyer Referral Service
544 Main Street
Baton Rouge, LA 70802
Phone (225) 344-9926
www.brba.org

Consumer Credit Counseling Services
615 Chevelle Court
Baton Rouge, LA 70806
Phone (225) 923-2227
www.moneymanagement.org

Baton Rouge Bar Association
544 Main Street
Baton Rouge, LA 70802
Phone (225) 344-4803
www.brba.org

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Dear City Court User:

Baton Rouge City Court is committed to providing quality and efficient services to those who utilize the judicial process at its facility. The Court is committed to improving any aspect of the system. Therefore, we are interested in your recommendations, suggestions, or observations in that effort. Those comments can be mailed to me at P. O. Box 3438, Baton Rouge, LA 70821 or e-mailed to lnorris@brgov.com.

Lon Norris
Clerk of Court/Administrator
Baton Rouge City Court
(225) 389-5279