

HOW TO USE THE
SMALL CLAIMS
DIVISION

OF THE
BATON ROUGE CITY COURT
233 St. Louis Street
Baton Rouge, Louisiana 70802
(225) 389-3017

*Presented as a courtesy
by the
Baton Rouge City Court Judges*

LAURA P. DAVIS
Division A

KELLI TERRELL TEMPLE
Division B

ALEX "BRICK" WALL
Division C

YVETTE M. ALEXANDER
Division D

SUZAN S. PONDER
Division E

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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 \$3,000.00. 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 S.C.C.?

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 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 S.C.C.:

- 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 DO I SUE IN SMALL CLAIMS COURT?

Come to the Baton Rouge City Court, 233 St. Louis Street, Room 251 (telephone 225-389-3017). Parking is available one block south of the City Court Building. A court cost deposit for filing a Small Claim action must be paid upon the filing of the suit. Refer to the Civil Court Costs Schedule for the current costs. Payment may be made by cash, cashier's check, money order, personal check that is made payable to Baton Rouge City Court, and Mastercard, Visa or Discover Card (5% fee is added for credit card payments). Additional fees are required for service on the defendant made by the East Baton Rouge Parish Sheriff's Office and the cost varies according to zip code. All court cost deposits are normally assessed against the party ultimately losing the lawsuit, but may be assessed against either party. If you cancel or dismiss a suit in S.C.C., there are no refunds.

YOU MUST HAVE WITH YOU:

The proper legal name and complete 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 address of the person being sued.

DETERMINE THE PROPER PARTY TO SUE:

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.

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.

FILING YOUR CLAIM:

1. The Clerk will give you a form entitled "Statement of Claim and Citation." Be prepared to provide the following information:

- Your name, numerical street address, and daytime telephone number;

- The correct name and address of the party that you are suing. If it is a corporation, you will need the proper name and address and the registered agent;
- A simple but COMPLETE statement of why you are suing. This statement should include:

Dates, places, and persons as which relate to your claim; and

The total amount of money you are trying to recover with an itemization and explanation.

Remember: The limit is \$3,000.00, excluding interest, court costs, and attorney fees (if attorney fees are recoverable).

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.

2. Next, take your completed and signed Statement of Claim and Citation form to the Small Claims Division and pay the required filing fee. (Refer to the current Civil Court Costs Schedule.) If the defendant is to served outside the city limits, but within East Baton Rouge Parish, you must provide a **check** made payable to EBRP Sheriff for the cost of service in addition to the required filing fee. The cost of service by the East Baton Rouge Parish Sheriff’s Office varies according to zip code. Please ask the Clerk’s office for the required service fee amount.

WHAT HAPPENS AFTER YOU FILE SUIT:

If the defendant is to be served at an address within the limits, the Clerk’s Office will forward the copy of your Statement of Claim and Citation, which includes an “ATTENTION SHEET” to the City Constable for “service” (or delivery) on the defendant. This “Attention Sheet” informs the defendant that he has been sued and has ten calendar days (inclusive of holidays and weekends) in which to Answer. These ten (10) days are a period of time in which you, the plaintiff, cannot take any action. After the ten (10) calendar days, the defendant can still file an Answer at any time prior to your obtaining Judgment. If and when the defendant is served, the Clerk’s Office will mail service information to the plaintiff.

If service is outside the city limits, the Clerk’s Office will mail the defendant’s copy by certified mail, return receipt requested, to the address provided. When the postal return is received, the Clerk’s Office will mail the service information to the plaintiff. (Check glossary at end of this publication for types of service.)

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 Office. 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.

As plaintiff, you may call the Civil Division of City Court at 389-3017 on the 11th day after the defendant has been served to find out if the defendant has filed an "ANSWER." If no answer has been filed, your next step is to "confirm a default judgment." You may obtain a default judgment packet from the Clerk's Office and return it by mail. The Clerk's Office will advise you if your personal appearance is necessary.

If the defendant has been served and has filed an answer or other documents or pleadings contesting the claim, you (plaintiff) must write the Clerk of City Court and ask for a trial date. This action may be done in letter form. (Attorneys must observe the local Rules of Court.)

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 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. In such cases, you should be alerted to the advisability of hiring an attorney.

HOW DO I PREPARE FOR COURT?

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 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 \$20.00 will be charged for each subpoena issued. If a witness is not subpoenaed and does not appear at the hearing, 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 "unsubpoenaed" 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 THE 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 this 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 deleted from the Court's docket. If time does not permit a letter, telephone the office of the Judge handling Small Claims. 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 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. There is a \$50.00 fee for transfer to the regular civil docket. 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.

Your written Answer must be delivered to the plaintiff. You can request in writing to the Court for the plaintiff to be served and provide the name and address for service, or you can mail a copy of the Answer to the plaintiff. If mailed, you must file a written certificate with the Court stating that you mailed a copy of the 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. The defendant (plaintiff-in-reconvention) must pay a basic filing fee in accordance with the current Civil Court Costs Schedule. If the reconventional demand is to be served on a business or an

individual at his/her place of employment outside the city limits, but within Parish of East Baton Rouge, the cost of service by the East Baton Rouge Parish Sheriff's Office varies depending on zip code. Please ask the Clerk's office for the appropriate service fee amount and make the check for service payable to EBRP Sheriff.

CONFIRMING A DEFAULT JUDGMENT

Once the defendant has been served with the citation, he/she has ten calendar days to file an Answer in the Small Claims Division. On the 11th day you may contact the S.C.C. to see if an Answer was filed. If an Answer was not filed, you can pick up a default judgment packet in the S.C.C. and return it by mail. The Clerk's Office will advise you if your personal appearance is necessary.

If testimony is required, you may confirm your default judgment on Monday, Tuesday, Thursday, or Friday. You will need to check in at the Civil Office, in Room 251. The time to check in is from 8:00 a.m. to 9:00 a.m. Bring all necessary documents and witnesses with you.

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). 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. You will be notified of the decision by mail.
5. An arbitrator may be appointed by the Judge to hear your case. If so appointed, his decision will be final and binding. After the arbitrator announces his decision, you need to go to Room 251 and request a Motion for Judgment Confirming Arbitrator Award. After completing the form the Civil office will attach it to the file and return it to the Judge for signature. This step is necessary, because you cannot collect on an Arbitrator's Award.

A Judgment rendered in Small Claims Court 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.**

***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 cost deposits 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 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 deposit is \$70.00 for filing this action, and it is not a new trial or hearing. 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.

***M* AY I DO ANYTHING IF I LOSE?**

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, 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 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.

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.
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.
incorporated	formed into a legal corporation under applicable state law.
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.
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.

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?

WHERE ELSE CAN I GO FOR INFORMATION?

Capital Area Legal Services Corporation
200 N. 3rd Street
Baton Rouge, LA 70801
Phone (225) 387-5173

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

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

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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 most interested in 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