

How to Sue in Small Claims Court



Small Claims Court is a special court where:

- A person or a business can sue for up to \$5,000. (You can sue for more than \$5,000, but you must sue in Magistrate Court. You cannot get around the \$5,000 limit by filing 2 small claims.)
- The rules are simple.
- You don't need a lawyer. (You can talk to a lawyer before and after your trial, but you cannot have a lawyer speak for you in court. If you are a business, the owner or an employee can speak in court, as long as the employee is not a lawyer.)

To Start Your Case...

① Fill out these court forms:

- *Claim* form (You are the *Plaintiff*. The person or business you are suing is the *Defendant*.)
- *Summons*
- *Affidavit of Competence and Non-Military Service (Ada County)*

You can get these forms from the Court Clerk or online to print or e-file them:

Guide & File and E-file: To use an online interview to prepare your forms or to e-file go online to: <http://guideandfile.idaho.gov>.

If you are a business filing the claim in a county where e-filing is available, **you must e-file** your documents.

Print: To print and fill out your forms go to: www.courtselfhelp.idaho.gov/small-claims. Sign and date the completed forms. Make at least two copies: 1 for you and 1 for each Defendant.

② Take your completed forms to a court in the county where the Defendant lives or the problem happened.

There is a **\$69** filing fee for Small Claims cases.

Different kinds of cases have different deadlines. If you miss your deadline, you won't be able to file your claim. To know the deadline for your case, ask a lawyer or read this state law:

<http://legislature.idaho.gov/statutesrules/idstat/Title5/T5CH2/>

③ Someone – not you – serves the Defendant

Each Defendant must be **served** (given) a copy of the papers you file at court and additional forms. Read *How to Serve Your Small Claims Papers* to know what to do.

Warning! If you do not serve correctly, the court will close your case.

④ Wait 21 days for the Defendant to “answer”

If the Defendant files an *Answer* within 21 days of

being served, that means s/he **disagrees** with your claim. If this happens, the Clerk will mail you:

- A *Notice* with the date and time of your trial, and
- A copy of the Defendant's *Answer*, which explains his/her side of the case.

⑤ If the Defendant does **not** “answer” within 21 days (and was served correctly) you will get:

- A *Notice* with the date and time of your trial, or
- You can request a *Default* form to fill out and file. The Default requests that the court grant your claim because Defendant did not respond within the deadline.

A judge will review your claim and evidence. You will win your case **if**:

- The judge decides your claim is valid,
- You go to your trial (or file a complete *Default*).
- The Defendant is 18 or older and able to understand what the case is about.
- You show the court that the Defendant is **not** on active military duty. Contact the Defense Manpower Data Center for a free report:

Tel.: 1-800-538-9552

Online: <https://scra.dmdc.osd.mil/scra/#/home> (only if you have the Defendant's social security number or date of birth).

Important: If the Defendant could not answer because s/he is in the U.S. Armed Forces, you **may not be able to** get a default judgment.

If you meet these requirements, the clerk will mail or give you a copy of the “default judgment.”

⑥ Contact the Clerk if...

You cannot go to your trial on the date listed on the *Notice*. If you have an *urgent* reason to change the date, file a *Motion and Order to Continue* at least 2 weeks before your trial.

You or a witness needs help with English or has hearing problems. The Clerk can send a free interpreter to your trial. The court does not allow friends or relatives to interpret for you.

Full Name of Party Filing Document

Mailing Address (Street or Post Office Box)

City, State and Zip Code

Telephone

Email Address (if any)

IN THE DISTRICT COURT FOR THE _____ JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
SMALL CLAIMS DEPARTMENT

Plaintiff(s),
vs.

Defendant(s).

Case No. _____

CLAIM

\$ _____ Claim
\$ _____ Filing Fee
\$ _____ Service Fee
\$ _____ Another Notice
\$ _____
\$ _____ Total

Plaintiff's Name Address City State Zip Phone

Plaintiff's Name Address City State Zip Phone

Defendant's Name Address City State Zip Phone

Defendant's Name Address City State Zip Phone

(If you are seeking a judgment for money, fill out this portion.)

AMOUNT OF CLAIM: _____ (not including filing and service fees)

DATE CLAIM AROSE: _____ (month and year)

BASIS FOR YOUR CLAIM: _____

If you are seeking a judgment for the return of personal property, fill out this portion.

PERSONAL PROPERTY: I am the owner, or I am entitled to possess, the following personal property, which is being held by the defendant (specifically describe the property): _____

VALUE OF THE PROPERTY: \$ _____

Service of process by certified mail requested: Yes No

BY SIGNING THIS CLAIM, THE PLAINTIFF VERIFIES THAT (1) the Plaintiff is the true owner of the claim, (2) the Defendant resides in _____ County, **or** the Defendant resides outside Idaho and the claim arose in _____ County, and (3) the information above is true and correct to the Plaintiff's best knowledge.

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Date: _____

Typed/printed name

Plaintiff's Signature

Favor de avisarnos antes de la audiencia si usted necesitara un interprete en la corte.

IN THE DISTRICT COURT FOR THE _____ JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
SMALL CLAIMS DEPARTMENT

_____	Case No. _____
_____	SUMMONS
vs. Plaintiff(s),	

Defendant(s).	

To the Defendant(s): You have been sued by the Plaintiff(s) in the court listed above.

Response Due at the Court Within 21 Days

File the answer form you received, with the Court Clerk at:
(mailing address, physical address if different, and telephone number of the court):

IF YOU DO NOT FILE YOUR ANSWER with the court within 21 days, the court may enter judgment against you, for the money, personal property, and/or filing and service costs.

IF YOU FILE AN ANSWER, the court will send you a notice with the date and time to appear in court. Make sure the court has your current mailing address.

Favor de notificarnos, antes de la fecha de su audiencia, si necesita un intérprete.

Date: _____

CLERK OF THE DISTRICT COURT

Typed/printed name

By: _____
Deputy Clerk

How to Serve Your Small Claims Papers

The Defendant **must** be served (given) a copy of all the papers you file in Small Claims Court. If there is more than one Defendant in your case, each one must be served separately – even if they are married or living together.

After you serve the Defendant you must file an *Affidavit of Service* with the Court. In most cases the deadline to serve and file this *Affidavit* is **30 days**. **Some courts allow up to 90 days** after you file your *Claim*. Ask the clerk about your deadline.

To serve the Defendant follow these steps:

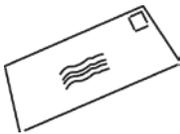
① **Fill out the header in the *Affidavit of Service* form.**

You can get the form from the Court Clerk or online at: courtsselfhelp.idaho.gov/small-claims.

② **Have someone 18 or older – not you – serve the Defendant.**

Each Defendant must be served (given) a copy of these forms: *Summons, Small Claim, Answer (Blank), Instructions for Defendant*. The Defendant can be served by **mail** or **personal** delivery.

➤ For U.S. **Certified mail** service



If you pay a fee, the Clerk can have the Defendant served by certified mail, return receipt.

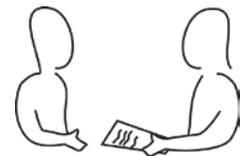
Warning! If the Defendant refuses to sign the return receipt or if someone who is not the Defendant signs, you will have to serve the Defendant again, using personal service. If this happens, the Clerk will notify you.

➤ For **personal** service, choose **1** of these options:

- Pay the **Sheriff's office** (or the Marshal's office for some counties) to serve the papers. You must tell them exactly where to find the Defendant. The Sheriff or Marshal will give you the *Affidavit of Service*.

In some counties, you pay the Court Clerk and the Sheriff or Marshal gives the *Affidavit of Service* to the Clerk. Ask the Clerk how it works in your county.

- Pay a professional **process server**. You must:
 - Give the server a copy of your court forms.
 - Explain exactly where to find the Defendant.



If you do not know where the Defendant can be found, some process servers will investigate for you, for a fee.

- Ask someone 18 or older – not you** or anyone else involved in this case – to personally give each Defendant a copy of your court papers.

③ **File the *Affidavit of Service***

After serving, ask the server to fill out the *Affidavit of Service* form and return it to you. Then you must file the *Affidavit of Service* with the Clerk, or you can file it at your trial.

If you miss your deadline to file the *Affidavit of Service*, or if you serve incorrectly, you can file your claim again if you are within the statute of limitations for your claim. If you file again within 6 months of filing your first claim, you may not have to pay another filing fee.



Full Name of Party Filing Document

Mailing Address (Street or Post Office Box)

City, State and Zip Code

Telephone

Email Address (if any)

IN THE DISTRICT COURT FOR THE _____ JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
SMALL CLAIMS DEPARTMENT

Plaintiff(s),
vs.

Defendant(s).

Case No. _____

AFFIDAVIT OF SERVICE OF:

- CLAIM
- SUMMONS
- ANSWER FORM
- INFORMATION FOR DEFENDANTS
- OTHER: _____

Note: Either use a separate form for each Defendant served, or include information on this form as to how each Defendant was served.

I, _____, certify and state:

I am over the age of 18 years, and I am not a party to this case nor an employee of a party to this case.

On _____ (date), I served true and correct copies of the documents indicated above on _____ (name of Defendant) by:

Personal delivery to _____ (name of Defendant) at

_____ (location where process served).

Personal delivery at Defendant's usual place of residence, (address) _____

_____, to (name of person served), _____, a
person who is over the age of 18 and resides there.

Personal delivery to _____, the Defendant's
authorized agent for service of process, at _____

_____ (location where process served).

I am charging the Plaintiff(s) \$ _____ for this service.

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Date: _____

Typed/printed name

Signature of Process Server

Get Ready for Your Small Claims Trial



Arrive early!

Look for the date and time of your trial on your *Notice*. You may need extra time to get through security and find your courtroom.

Check in with the Clerk.

In some counties, the court will order you and the other side to talk to a mediator. The mediator will try to help you settle the case without going to trial.

Bring your forms with you.

- Turn your phone off. Remove your hat. No food, no gum, no drinks in the courtroom.
- Stay calm. Be polite. Do not interrupt anyone.
- Do not speak until the judge asks you to.
- If you do not understand something, say, "I don't understand."

Tip: Do not bring children unless they can sit quietly for a few hours.

Wait for the court to call your case.

The judge will ask you to speak first. This is your chance to show why you should win. Say the most important reasons that support your case.

Tip: It's OK to make notes about what you want to say. If you get nervous, just read from your notes.

Bring evidence.

Give the judge copies of your **proof** that supports your case, such as:

- Contracts or other documents
- Receipts or cancelled checks
- Invoices or statements
- Photos

Tip: If you have an audio, video, or other recording, talk to the Clerk as soon as possible. Ask if you need to bring your own equipment.

You can bring witnesses or statements.



You may have a **witness** speak at your trial. If it's hard for the witness to go to court, ask the witness to write a statement.

If only an expert would know if your claim is correct, you may bring an **expert witness** (or their statement).

Listen while the Defendant explains his or her side of the case.

If the Defendant is at the trial, the Defendant may show evidence, bring witnesses or statements, and explain why you should not win your case.

After your trial, get your judgment.

The judge decides many cases at the end of the trial and gives you and the Defendant a copy of his/her decision (the *judgment*). If the judge decides later, you will get the judgment in the mail.

If you do not agree with the court's decision, you can appeal (fight the court's decision) if:

- You lose your case, or
- You win your case, but the court gives you less money than you asked for.

If you want to appeal, you have **30 days** after the date of the judgment to file a *Notice of Appeal* with the Clerk. You will have to pay an **\$81** filing fee.

Warning! The 30-day deadline is very strict.

If the Defendant does not agree with the court's decision, s/he can also appeal. If this happens, the Clerk will send you a *Notice of Appeal*.

Note: Appeals are more formal than small claims process. The parties can have lawyers.

If you win, collect your judgment.

If you win your case, the court will make a *judgment* and order the Defendant to pay you or return property to you.

If the Defendant does not pay, the court will **not** collect it for you. But there are things you can do to get your money/property. See the brochure from the Clerk or online: [Collecting on Your Small Claims Judgment \(Under Small Claims here: \[courtselfhelp.idaho.gov/publications\]\(http://courtselfhelp.idaho.gov/publications\)\)](#)

After the Defendant pays, file a form.

You **must** tell the court when the Defendant has paid the total judgment by filing a *Satisfaction of Judgment* form. Get this form from the Clerk or online at: courtselfhelp.idaho.gov/small-claims
Warning! If you do not file this form, the court can order you to do it.

Questions?

- Visit the Court Assistance Office at your local county courthouse.
- Talk to a lawyer. The court **cannot** give legal advice.

Full Name of Party Filing Document

Mailing Address (Street or Post Office Box)

City, State and Zip Code

Telephone

Email Address (if any)

IN THE DISTRICT COURT FOR THE _____ JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
SMALL CLAIMS DEPARTMENT

Plaintiff(s),
vs.

Defendant(s).

Case No. _____

AFFIDAVIT FOR DEFAULT, OF
COMPETENCE, NON-MILITARY
SERVICE, AND AMOUNT DUE

I certify:

1. I am 18 years of age or older, and I am the Plaintiff in this case, or the Plaintiff in this case is a business organization and I am an owner or employee of the Plaintiff.
2. Proof of service upon Defendant has been filed in this case.
3. Defendant has failed to answer or defend the above-entitled matter as required by law within twenty-one (21) days of the date of service.
4. The Defendant(s) in this case is (are) at least 18 years of age, and not incompetent.
5. Check one:
 Not Applicable, Defendant is a business entity.
 Defendant(s) in this case is (are) not in the uniformed services as defined by the Servicemembers Civil Relief Act of 2003; I know this because: _____

Or I am unable to determine whether the Defendant(s) is (are) in the uniformed services as defined by the Servicemembers Civil Relief Act of 2003,

Or Defendant(s) is (are) in the uniformed services as defined by the Servicemembers Civil Relief Act of 2003, and has waived in writing Defendant's rights under the Act.

6. This claim does does not include interest, finance charges, or late charges. If so, the amounts are calculated as follows: _____

7. I have attached copies of all relevant documents to this affidavit.

8. The Defendant(s) owes the Plaintiff:	\$ _____
Deduct payments made since the date of filing:	\$ _____
Add fees for filing claim and service of process:	\$ _____
TOTAL DUE AND OWING	\$ _____

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Date: _____

Typed/printed name

Signature