

IRRIGON JUSTICE COURT - SMALL CLAIMS DEPARTMENT **PROCEDURES AND INSTRUCTIONS**

PLEASE READ THESE INSTRUCTIONS CAREFULLY. The Court Clerk may answer procedural questions but cannot give you legal advice (ORS 8.245) or complete the forms.

The Purpose of the Small Claims Department is to decide disputes promptly and economically. Small claims proceedings in Justice Courts are governed by Oregon Revised Statutes (ORS Chapter 55). Small Claims hearings are informal. Unless the Court has given prior approval for an attorney to be present, all parties appear without an attorney. Forms are available on our website at co.morrow.or.us

IMPORTANT - Forms must be complete and legibly written

FILING THE CLAIM

The party filing the claim is the **PLAINTIFF**. The party being filed against is the **DEFENDANT**. To initiate a case, the plaintiff must complete and file a **CLAIM AND NOTICE OF CLAIM** and pay the filing fee. Claims for \$750 or less **must be filed** in the Small Claims Department. A claim for over \$750 up to \$10,000 **may be filed** in the Small Claims Department. Before filing a claim, the plaintiff must make a bona fide effort to collect the claim from the defendant.

When the Claim May be Filed in Morrow County ORS 51.100(1)
One of the parties resides in Morrow County.

Identifying the Parties Involved in the Claim

All parties must be identified correctly and all names must be spelled correctly:

1. All **INDIVIDUALS** must be listed by their proper name. For example, JAMES L. SMITH, SUSAN R. SMITH, no parties are to be listed as Mr. and Mrs. James Smith.
2. If a **BUSINESS** is involved and is not a corporation, the plaintiff must list the owner's name plus the name of the business. For example, JAMES L. SMITH dba JIM'S AUTO REPAIRS.
3. If the business is a **CORPORATION**, the plaintiff must identify the business and provide the name and address of the corporation's registered agent. For example, ABC LOAN INC., and Oregon Corp. (registered agent: James Smith, 123 Happy Street, Canyon City, OR 97820). If you need assistance in the proper listing of a business, call the Corporation Commission in Salem at 503-986-2200 or find them online at www.filinginoregon.com.
4. If a party is a **PARTNERSHIP**, the plaintiff must list the name of the partnership plus the name of each partner. For example, JAMES SMITH & WILLIAM JONES, dba SMITH & JONES, a Partnership.
5. If any party is under the age of 18 years or in the military service or mentally incapacitated, an attorney should be consulted prior to filing a claim.

Fees Required at Filing

At the time of filing, you must pay the appropriate filing fee*. Payment of fees may be made by cash, money order, cashier's check, debit/credit card payable to "MORROW COUNTY JUSTICE COURT". Upon receipt of your claim and filing fees, the Clerk will file the claim and issue the **NOTICE OF CLAIM**.

HOW DO YOU "SERVE" THE OTHER PARTY?

The plaintiff must officially notify all defendants that a case has been filed. This is known as 'service'.

There are four ways you can serve a defendant once you have filed your claim:

Personal Service

1. **By the Sheriff's Office:** Take or send a copy of the claim to the sheriff's office in the county where the defendant is located and have a sheriff's deputy serve the defendant. The sheriff's office charges a fee for service.
2. **By a Process Server:** You can also hire a private process server of your choice.
3. **By a Non-Party:** Have a competent* person 18 years or older who is a resident of Oregon and who is neither a party to the case nor the lawyer of a party, serve the defendant. If you have safety concerns, have the sheriff serve the defendant. The server cannot be an employee or director/officer of any defendant. If the defendant is not in Oregon, the process server can be a resident of the state where the defendant is. *Competent means a person who can understand, remember, and tell others about an event.

An original **PROOF OF SERVICE** must be filed with the court by whoever serves the defendant, including the date of service and the name of the person served.

Substituted Service

The process server may leave the notice at the defendant's residence (where the defendant normally lives) with someone 14 or older who lives there. If so, a copy of the claim (with a statement of the date, time, and place that the papers were served) must also be mailed to the defendant by first class mail. Your process server can do this and mark the appropriate box on the **DECLARATION OF SERVICE**. If you do the mailing, you must file a **DECLARATION OF SERVICE MAILING** with the court. The date of service is the day you put the first class mailing in the mail.

Office Service

If a person to be served maintains an office where they conduct business, office service may be made by leaving a true copy of the Claim and Notice of Claim at such office during normal working hours. A copy of the claim (with a statement of the date, time, and place that the papers were served) must also be mailed to the defendant by regular first class mail. Your process server can do this and mark the appropriate box on the **DECLARATION OF MAILING**. If you do the mailing, you must file a **DECLARATION OF SERVICE MAILING** with the court. The date of service is the day you put the first class mailing in the mail.

By Mail

You must do **TWO** things to serve by mail. First, send the claim to each defendant's home or business address by first class mail. Second, send a copy by certified mail; return receipt requested with restricted delivery (delivery only to the addressee). You must file proof of service with the court, including the signed green card, date of receipt and item number along with a **DECLARATION OF MAILING**. Fill out the **DECLARATION OF SERVICE MAILING** section. If you do not receive the green card back, or if someone other than the defendant signed for it, service by mail was not effective and you must try another type of service. The date of service is:

1. If the defendant is an individual, the day the defendant signs the green receipt card.

2. If the defendant is *not* an individual (for example, a business or public agency), then the earlier of:
 - a. *(if mailed to an Oregon address)* 3 days after you put the first class mailing in the mail **or**
 - b. *(if mailed outside of Oregon)* 7 days after you put the first class mailing in the mail

An original proof of service must be filed with the court for your case to proceed. If proof of service is not received within the time set by the court, your case may be dismissed after written notice is sent to you.

Acceptance of Service – In addition to the above forms of service, you can ask each defendant to sign an **ACCEPTANCE OF SERVICE** form as an alternative to formal service. Defendant(s) can accept the claim and other papers from you and sign the form to prevent having a sheriff or process server perform service. Signing the **ACCEPTANCE OF SERVICE** does not mean the defendant(s) agree with anything in your claim, only that he or she received the papers. If the defendant does not want to sign the **ACCEPTANCE OF SERVICE**, you must use another method.

Important Note: If you are suing a state agency, you must serve both the agency *and* the Attorney General. You must also send copies of anything you file to the Attorney General (*see below for information about service*). ORS 51.090

Serving Public Bodies – If you are suing the State, use personal service to serve the Attorney General or your server can leave the papers with a deputy, assistant, or clerk at the Attorney General's office. For any other public body, you can use personal service or office service on an officer, director, managing agent, or lawyer for the defendant. If you are suing any state agency, you must also serve all papers on the state Attorney General.

Defendant's Response

The defendant has **14 CALENDAR DAYS** after being served to respond to the plaintiff's claim. (14 days from the date of personal service or 14 days from the date of mailing notice after substituted service.) If the defendant does not respond within the 14 days, the plaintiff may apply to the Small Claims Department for a **DEFAULT JUDGMENT**.

When the claim is filed, a **DEFENDANT'S ANSWER/COUNTERCLAIM** form will be supplied by the court. Each defendant answering the complaint must sign the **ANSWER** form.

The defendant may elect to:

1. Admit and pay the claim: The defendant may settle the claim by **paying the plaintiff** the amount of the claim plus the amount of the filing fees and service expense paid by the plaintiff, and mailing proof of payment to the court. If the claim is for the recovery of specific personal property, the defendant may settle the claim by **delivering the property to the plaintiff** and paying the plaintiff the amount of the filing fees and service expense paid by the plaintiff and mailing proof of delivery and payment of the court.
2. Deny the claim and demand a hearing: The defendant is required to pay the appropriate fee* at the time of filing. After the answer is filed, the case will be set for a trial date by the court and the parties will receive notice by mail. The hearings are informal.

Unless the Court has given prior approval for an attorney to be present, all parties appear without an attorney.

3. Deny the claim, demand a hearing and file a counterclaim: The counterclaim must involve the same matter as the plaintiff's claim and defendant must pay the appropriate fee*. Jury trials are available only if the amount of either the claim or counterclaim is over \$750.
4. Deny the claim and demand a jury trial: This choice can be made if the amount or value of the claim exceeds \$750, and defendant must pay the appropriate court fee*. The Court will notify the **plaintiff** by mail that within 20 days, the **plaintiff** must file a civil **COMPLAINT** with the Court and the case is processed as a civil matter. The **plaintiff's** claim is no longer limited to the amount stated in the original claim, though it must involve the same controversy.

If the defendant fails to do one of the above within 14 calendar days after receiving the Notice, then upon written request from the plaintiff, the Court may enter a **DEFAULT JUDGMENT** against the defendant for the amount claimed, filing fees, service expenses paid, plus a prevailing party fee. If no default judgment is requested by the plaintiff within 30 days of the date of service, the court will take action to dismiss the case.

HEARING

If your case proceeds to a hearing, you must have your evidence ready at the hearing; witnesses, documents, photographs, business record, etc. and you must provide copies of any evidence you intend to submit to the opposing party and the court. (The court may ask to see originals of any copy submitted.) You must also be prepared to prove your costs (filing fees, service fees paid and any other associated costs).

COLLECTION OF JUDGMENT

If a judgment is awarded and the losing party (judgment debtor) does not voluntarily make payment, the winning party (judgment creditor), upon payment of the required court fees, may do one or more of the following:

Issue a **WRIT OF GARNISHMENT** to the Sheriff's office or a bonded process server in order to obtain money or other property of the judgment debtor which is in the possession of a third party (e.g. debtor's employer, bank, etc.).

Issue a **WRIT OF EXECUTION** to the Sheriff's office in order to seize property of the judgment debtor and to use the property toward the payment of the amount involved.

File a **TRANSCRIPT OF JUDGMENT** in the circuit court to place a lien against the debtor's real property if the money judgment is greater than \$10 and less than \$3000. An attorney should be consulted if there are questions concerning which remedy is most appropriate.

REGARDING APPEALS FROM SMALL CLAIMS IN JUSTICE COURT

The judgment of the court shall be conclusive upon the plaintiff in respect to the claim filed by the plaintiff and upon the defendant in respect to a counterclaim asserted by the defendant. The defendant may appeal if dissatisfied in respect to the claim filed by the plaintiff. The plaintiff may appeal if dissatisfied in respect to a counterclaim asserted by the defendant. A party entitled to appeal may, within 10 days after the entry of the judgment against the party, appeal to the circuit court for the county in which the justice court is located. If final judgment is rendered against the

party appealing in the appellate court, that party shall pay, in addition to the judgment, an attorney's fee to the other party in the sum of \$10. Appeals from the small claims department shall only be allowed in cases in which appeals would be allowed if the action were instituted and the judgment rendered in the justice courts, as is provided by law. ORS 55.110

PAYMENTS

Payments are to be made to the Judgment Creditor. The court does not perform collections and will not secure payment for the Judgment Creditor. Once the Judgment has been paid, the Creditor is legally responsible for filing a **FULL SATISFACTION OF JUDGMENT** with the court. If the claim is settled prior to the entry of Judgment, the Plaintiff must file a **MOTION FOR JUDGMENT OF DISMISSAL**.

IF YOU HAVE LEGAL QUESTION, YOU SHOULD CONTACT AN ATTORNEY. If you need help finding an attorney, you can call the Oregon State Bar Lawyer Referral Service toll-free in Oregon at 1-800-452-7636 or you can find their website at www.osbar.org

***FEE WAIVER AND DEFERRAL FORM:** if you are financially unable to pay the fees, you may request a waiver or deferral of fees. Forms are available online or from the Court Clerk along with a current fee schedule.

Small Claims Fees in Justice Court

\$37.00	Filing Fee
\$37.00	Defendant's Answer Fee (No fee unless Defendant files an Answer or Motion)
\$215.00	Defendant's Answer w/Demand for Jury Trial, Claim must be more than \$750.00 (\$90 Civil Answer Fee + \$125 Jury Trial Fee, removes action from Small Claims to Civil Docket)
\$53.00	Plaintiff's Fee after Defendant's Answer w/Demand for Jury Trial (\$90 - 37 = \$53)