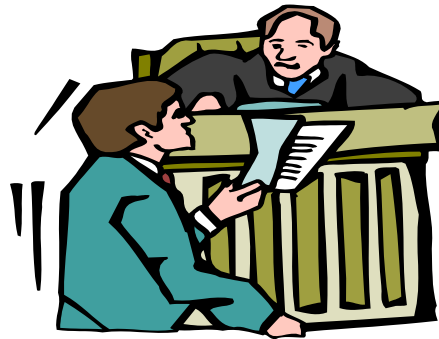


REPRESENTING YOURSELF IN GENERAL SESSIONS COURT



JUSTICE FOR ALL

WWW.LAET.ORG



Serving Bledsoe, Bradley, Blount, Carter, Cocke, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Polk, Rhea, Sequatchie, Sevier, Sullivan, Unicoi and Washington Counties.

REPRESENTING YOURSELF IN GENERAL SESSIONS COURT

This booklet is not a substitute for legal advice and it is not intended to cover all circumstances that might occur in a case before the General Sessions Court. If you need advice, contact a private attorney or your local Legal Aid office. If you use this booklet to plan and prepare for your case in General Sessions Court, it is very important that you first **read the entire booklet**.

I. What Is General Sessions Court?

This booklet tells you what you need to do if you go to General Sessions Court on a **civil** case. This booklet does not cover **criminal** cases. If you are charged in a criminal case, you need to discuss the appointment of a lawyer with the judge.

This booklet is written mainly for people who want to use the General Sessions Court to get back money or property. However, this advice will also be helpful if you are being sued.

Each county in Tennessee has a General Sessions Court. They generally handle small claims.

II. You Do Not Have to Have A Lawyer.

General Sessions Courts are set up to be a place where small disputes can be settled without a lawyer. Most cases in General Sessions Court do not require a lawyer. You can **only** represent yourself, your spouse or your child. However, if the other side has a lawyer, you may be at a disadvantage. This depends on how complicated your case is. It also depends on your ability to explain your case to the judge.

If you need advice before going to your hearing, you can talk to a private attorney. He or she may charge a small fee. Also, you may call the nearest Legal Aid office to obtain advice.

III. What The Court Can Hear.

The General Sessions Court can decide a case if the amount of money or property involved is **less than** \$25,000.00. If your case involves **over** \$25,000.00, you should consult an attorney to determine how to proceed. Detainer warrants have no limit.

Also, the people or property involved in the case must have some contact with the county where the case is filed.

IV. Bringing A Case To Court – The First Step.

Of course, before you take court action you should write the person holding your property or money and ask that it be returned. Keep a copy of any letters you send. It is a good idea to send the letter by certified mail and ask for a return receipt. The letter and return receipt will help you show the court you tried to get your property or money back. If the person still refuses to return the property or pay your money, you will need to bring a lawsuit.

V. How To Get Into Court.

You start an action in General Sessions Court by filling out a **civil warrant**. You can get blank civil warrants at the clerk's office when you are ready to file suit. The warrant must list:

1. your name and address naming you as "plaintiff" in the case;
2. the name and address of the person you are suing naming that person as the "defendant";
3. a description of your property or the amount of money involved, making the description as clear and detailed as possible. (For example, the brand name or serial number).

4. If your case involves property, put down the market value of the property. The market value is the amount for which the item could be sold as it is now, not when it was new.

You must have all this information before you can begin a lawsuit. If you have any papers which show your right or title to the property, you should attach a **copy** of those papers to the warrant. (Most libraries and post offices have copy machines). Save the originals for your own records and to show the judge at your trial. A docket number will be assigned to your case. Any time you have questions about your case, you should call the clerk and tell them your name, the defendant's name and the docket number.

VI. How Much Will You Have To Pay?

You will be charged a **filing fee** by the court. This fee is different from county to county. If more than one defendant is involved, the fee will be higher. You can call the clerk to find out the costs.

If you do not have the money to pay for a warrant, you should ask the clerk to allow you to fill out an "affidavit of indigency". This is a statement you sign which says that you cannot afford the costs of bringing the lawsuit now, and granting it depends on your income and assets. If the judge or clerk approves the Affidavit of Indigency, you can delay payment of the fees and still have your case heard, but you may have to pay the costs in the future. Even if the judge approves your Affidavit, you will have to pay the litigation tax at the time you file the warrant.

Each defendant **must be served** with a copy of the warrant before the hearing is set. If your defendant is out of state but the property you are trying to get back is in Tennessee, you can publish notice of the lawsuit in a local newspaper. The clerk may arrange for publication or tell you how to do it. You have to pay the costs.

VII. Bond

You also **may** have to fill out a bond form. This is a statement saying you will go through the suit once you have filed a warrant. You will have to sign the bond and have someone else (your "surety") sign it also. If you do not go through with the suit, you may have to pay a penalty. If you do not pay, your surety will have to pay for you.

VIII. Witnesses.

You may want to call witnesses at the hearing. If someone saw you make the agreement with the defendant or knows the facts of the case because they saw them happen, his or her testimony may help your case. If you are very sure your witness will show up, you may only have to tell them the date of the hearing. If you are not sure that they will show up or if you do not want the hearing to go on unless the witness is there to testify, you may want to have your witnesses "subpoenaed".

A subpoena is a court order telling a person to come to court on a certain day and testify. A subpoenaed witness who does not come to court can be punished by the court.

You get witness subpoenas from the court clerk. There is a fee for the subpoena and it must be paid before the subpoena is issued. You may be able to avoid paying this fee by applying for the Pauper's Oath. The subpoena will be delivered to the witness by an officer of the court. If you have any questions, ask the Court Clerk.

IX. Before The Hearing.

Once the warrant is completed and you have made arrangement for the fees, the warrant will usually be served on the defendant by a sheriff, deputy sheriff or constable with a date for the court hearing already set. The court will **not** notify you of the court date. You must call the court clerk and find out the date. Sometimes hearings are postponed, so you should call the court clerk the day before the trial is set to make sure the date of your hearing has not been changed.

Get everything ready before you go to your hearing. Gather all the papers supporting your side of the case. Decide who you want to call as a witness and what you will ask them. Remember if you don't

understand what you want to say, neither will the judge. If for some reason you change your mind about bringing this suit, you can dismiss it (end it) without hurting your chances to bring it up again later. You can only do this twice, however. After that, the court will decide you have lost the case and you cannot bring suit on that case again.

X. Docket Call.

The first time you must appear in court in some counties is known as docket call. Your case will be called and if you are not present you will lose. If you are there but the defendant is not, you can win a judgment. The defendant's failure to appear will be taken by the judge to mean that the defendant admits he or she owes you the money or property.

If both you and the defendant are present, the judge will set a day and time for the hearing. You must return for the hearing. Not all counties have a docket call. Be sure to ask the clerk. Your first appearance may be the hearing itself.

XI. The Hearing.

There will be many other cases scheduled on the same day of your hearing. Wait until you hear your case called by the judge or court clerk. Arrive early to court because if you are late your case may be dismissed. As plaintiff, you will present your side of the case first. Once the case has been called, explain to the judge what property is being held or what money you are owed and why. Call your witnesses and give the judge your papers showing your right to ownership or money. **Be polite, but speak up.** You have a right to speak for yourself in court. Present your case and answer the judge's questions as best you can.

The defendant may or may not show up. If the defendant does show up, the defendant has a chance to explain his or her side of the case. If the defendant is there, you have a right to ask him or her **questions**, and the defendant has the right to ask you **questions**. This is called cross-examination. Answer the questions fully.

If the defendant does not show up, you will still have to present your side of the case. The judge will make a decision after hearing all the testimony. If you win, the judge will either say you can have your property back or will give you a judgment for the value of the property.

If the judge says you can get your property back, the defendant may agree to let you pick it up. If the defendant does not agree to let you have the property, the defendant has ten days to appeal. If the defendant does not appeal within ten days, you can go back to the court clerk and get a Writ of Possession issued by the court. In some counties, a sheriff's deputy or constable will go out and pick up the property and return it to the court for you. In other counties, the deputy or constable will only serve the writ of possession.

XII. Appeals.

If you lose the case, but want to try again, you have the automatic right to appeal. You must file an appeal within ten days from the time the court gave its decision. If you appeal, the case will be heard over again, usually in the Circuit Court. That court will hold a new hearing and treat the case as if your first trial did not happen.

To appeal to Circuit Court, you probably need a lawyer. You will have to pay new filing fees and arrange for witnesses again. Appealing a case to Circuit Court is more **complicated** and more expensive than filing a case in General Sessions Court.

XIII. Collecting A Judgment.

If you win on the lawsuit, but the defendant no longer has the property, the court may award you a money judgment equal to the value of the property plus any court costs you have paid. Or you may have a judgment that says the defendant owes you money. You will have to try and collect the money from the defendant. The court is not a collection agency; it will not get the money for you.

However, you can fill out papers at the court clerk's office which will help you collect on the judgment. If you know where the defendant works, you may try to garnish his or her wages. Or you may be able to have some defendants' property seized and sold at auction held by a deputy of the court. The money of the sale will then be paid to you to satisfy the judgment. The court clerk can explain these procedures to you.

XIV. What To Do If You Are Sued.

Most of the advice in this booklet is good for people who are being sued as well as people who want to recover property. If you are being sued, you should first decide whether you need a lawyer. Again this depends on the kind of case, your ability to explain the case in court, and whether the other side has a lawyer. Once someone sues you the sheriff, deputy, or private process server must deliver the warrant to you personally. (It is not good enough for the deputy to call you on the phone and tell you to come to court.) The deputy can also leave the warrant with someone over eighteen (18) years of age at your home. This is so you can see exactly who is suing you and what they are claiming. This is also necessary to make sure you get plenty of notice of the court date.

If you are sued, you should not ignore the warrant. You should be at the court on that date or call the clerk and say why you cannot be there. You should be able to get the trial date changed for good reason, but the other side will have to agree. At the trial you should bring your witnesses. Be prepared to show the judge all the papers you have about the case, and be prepared to explain exactly what happened. If you do not show up, the judge may rule against you even if you thought you have a good case.

If you lose, you have the right to appeal. If you do not have the money to post an appeal bond, you may appeal on a Pauper's Oath.

If you lost, there are certain steps you can take to protect your property even if you don't appeal. Every citizen has a right to a certain amount of property that a creditor cannot touch. This is called exempt property. Besides that you have a right to exempt \$4,000.00 worth of personal property.

For further advice on how to file this list of exemptions and to apply for a stay of garnishment and slow pay motion, please see our pamphlet entitled "Stopping a Garnishment and Protecting Your Property From Creditors". Note—a creditor cannot garnish your wages unless the creditor has first gone to court and obtained an Order saying you owe the money.



OFFICE HOURS AND LOCATION

Legal Aid of East Tennessee offices are open from 8:30 A.M. to 5:00 P.M. Monday through Friday.

Executive Director, David Yoder
(865)637-0484

Associate Director - Eric Miller

| | |
|--|---|
| 311 W. Walnut Street Johnson City, TN 37604 (423)928-8311 1(800)821-1312 Fax (423)928-9488 | 1001 W. 2nd North St. Morristown, TN 37814 (423)587-4850 1(800)821-1309 Fax (423)587-4857 |
|--|---|

Associate Director - Debra House

| | |
|--|--|
| 502 South Gay Street Suite 404 Knoxville, TN 37902 (865)637-0484 Fax (865)525-1162 | Compton Place 307 Ellis Avenue Maryville, TN 37801 (865)981-1818 Fax (865)981-1816 |
|--|--|

Knoxville Family Justice Center
400 Harriet Tubman
Knoxville, TN 37914
(865)215-6830

Associate Director - Russell Fowler

| | |
|---|---|
| 535 Chestnut Street Suite 360 Chattanooga, TN 37402 (423)756-4013 1(800)572-7457 Fax (423)265-4164 | 85 Central Ave., NW, Cleveland, TN 37311 (423)479-8577 1(800)445-3219 Fax (423)339-3282 |
|---|---|

Linea Gratis en Español 1(866)408-6573

No person in the United States shall, on the grounds of race, color or national origin, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

This pamphlet is intended for general information only. The circumstances of every case are different and need to be dealt with on a case-by-case basis. This is not a substitute for the advice of a lawyer. Also, the law may change and may be different from county to county.

