

Ely Justice Court

PLAINTIFF’S GUIDANCE FOR SMALL CLAIMS ACTIONS

If you are the person suing, you are the Plaintiff. This form is addressed to you, as the Plaintiff. The person you are suing is the Defendant. **You must use a form substantially similar to the form included in this packet.**

1. **Jurisdiction (type of case):**
 - a. You must first have demanded in the amount of money the defendant owes to you. It is best to write a letter to the defendant, telling him/her why he/she owes you money and giving him/her a reasonable amount of time to pay and informing if payment is not made you will proceed with a small claims action. It is best to send this by certified mail or have it personally served.
 - b. You can only be awarded money damages. You can claim no more than \$10,000.00. If you elect to sue in small claims for more than \$10,000.00 and win, you will be giving up any money above \$10,000.00. You cannot split your claim into multiple claims to bring it under \$10,000.00.
 - c. In order to sue in small claims, the debt must have arisen in White Pine County or the person you are suing must live or do business in White Pine County.

2. **Service:** You are responsible to pay the costs of serving the person you are serving. Generally, the White Pine County Sheriff’s Office (WPCSO) conducts service of small claims. You will need to contact WPCSO to determine the amount of the payment (775-289-8808). For more information about service, please review JCRCP 4, 5 & 91. It is your responsibility to provide enough information to WPCSO to enable WPCSO to serve the person you are suing with notice of the case. It is best if you provide as person’s correct name, mailing address and a street address where the person can be served. You may also employ a licensed civil process server serve your Affidavit. After service has been completed, it is your responsibility to ensure proof of service is filed with the Court. Failure to properly complete service will necessitate rescheduling of the hearing and may incur additional expenses to you. A certificate of service form is included within this packet.

3. **Filing Fees:** You are responsible to pay all filing fees. Payment is due, in full, at the time of the filing. If you pay by check or money order, make the payment payable to Ely Justice Court. If your check is returned for any reason (e.g. insufficient funds) your claim may be summarily dismissed/stricken and you may be subject to additional fees and a bench warrant. You may pay online by using PLC a001p3 at www.govpaynow.com. The filing fees are as follows:

<u>Claim Amount</u>	<u>Filing Fee</u>
\$.01 - \$1,000.00	\$ 56.00
\$1,000.01 - \$2,500.00	\$ 76.00
\$2,500.01 - \$5,000.00	\$ 96.00
\$5,000.01 - \$7,500.00	\$136.00
\$7,500.01 - \$10,000.00	\$186.00

4. **Complete the Affidavit:** You must legibly complete (print neatly or type) Affidavit and Order in blue or black ink. You must fill in all blanks or write or type “n/a” if the blank does not apply. You must sign the Affidavit in front of a notary or court staff. You must bring the original Affidavit and Order and three photocopies to the court. If you do not bring the required copies, you will be charges \$0.50 per page for copies.

5. **Hearing:**
 - a. When you file the small claims complaint, the clerk will tell you the date your case is set for trial and your case number. The Court generally conducts small claims hearings the first Monday morning of each month. It will be, at least, approximately one month until your hearing is

scheduled. This is to allow sufficient time for service of your Affidavit and to allow the person you are suing the legally required time to prepare.

- b. The person you are suing is entitled to at least 15 days notice prior to the hearing (i.e. he/she must receive a copy of the Affidavit from WPCSO at least 15 days prior to the hearing). If he/she does not receive 15 days, the Court may be required to reschedule the hearing.
- c. The Court must generally schedule multiple hearings at the same time. Your hearing may, therefore, not start immediately at the time it is scheduled.
- d. If you fail to appear for Court, your case will be dismissed.

6. **Burden of Proof:**

- a. This case is your case, involving your claims. You have the “burden of proof” and must prove your claim by a preponderance of the evidence (i.e. you must prove your claim is more likely than not). You must convince the Court the other person owes you the claimed money. The person you are suing does not have to disprove your claims.
- b. When you come to the hearing, you must bring everything (e.g. documents, photographs, witnesses, etc.) you need to prove your claim. The Court knows nothing about your case and can make its decision based solely on the evidence presented in the hearing.
- c. You get only one opportunity to present your claim.

7. **Witnesses & Evidence:**

- a. Witnesses
 - i. If a witness will not come voluntarily, you may use the subpoena power of the court. You must request issuance of the subpoena(s) well in advance of the court date (at least two weeks prior) as time will be needed for you to have the witness served. You must put your request for issuance of a subpoena in writing and including enough information to enable service of the person subpoenaed. It is best if you provide as person’s correct name, mailing address and a street address where the person can be served.
 - ii. Affidavits and written statements from a witness who do not attend are generally disfavored.
- b. Evidence
 - i. If you bring physical evidence (e.g. documents, photographs, physical items, etc.) and submit it to the Court, it will not be returned to you.
 - ii. Documents and photographs should be printed. The Court cannot accept or process electronic copies of documents.
 - iii. If you need the Court to print documents or make copies for you, you will be charged \$0.50 per page.

8. **Attorneys:** You have a right to hire an attorney to represent you. You do not have the right to a public defender (or other appointed counsel). Attorneys are not required in small claims actions. You may not recover attorney’s fees.

9. If you win your case, it is entirely up to you to collect the money. The Court is generally not permitted to provide you advice on how to collect. The Court does not establish or enforce payment plans. Garnishments of wages and other remedies will cause you to incur additional fees. Once the judgment has been satisfied, you are required to notify the Court.

10. Proper courtroom clothing is required. Shorts and/or tank tops are not allowed. Shoes are required. Clothing which shows offensive slogans or pictures is not allowed. Hats and sunglasses must be removed before entering the courtroom. Cellphones and other electronic devices must be silenced.

11. You may be allowed to appear remotely, via audiovisual transmission equipment (i.e. Zoom videoconferencing service). If you wish to appear in such manner, you must put your request in writing and send it to both the Court and the Defendant, at least 15 days prior to the hearing.