SMALL CLAIMS INSTRUCTIONS FOR PLAINTIFFS

If these instructions do not answer your questions, you can call the Oregon State Bar 503.684.3763, or go to *www.oregonstatebar.org*. The website *www.courts.oregon.gov* has several useful resources including links to the Oregon Revised Statutes and Oregon Administrative Rules. The court clerk may answer questions about filing procedures, but cannot give legal advice.

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. **Important Note:** If you are suing the Department of Corrections or any other 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)*.

Acceptance of Service – You can ask the defendant to sign an ***Acceptance of Service*** form as an alternative to formal service. The defendant 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 agrees with anything in your claim, only that he or she received the papers. NOTE: this is NOT required.

If the defendant does not want to sign the ***Acceptance of Service***, you must use another method. There are four ways you can serve a defendant *after* you file your claim:

NOTE: **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 any party. If you are suing any state agency, you must *also* serve all papers on the state Attorney General.

1. **Personal Service:**
   a. By Process Server: Take a copy of the claim to the sheriff's office in the county where the defendant is located and have a sheriff's officer serve the defendant. The sheriff's office charges a fee for service. You can also hire a private process server of your choice.
   b. By a Non-Party: Have a competent* person 18 years or older serve the papers. The server must be a resident of Oregon or the state where the defendant is. The server cannot be a party to the case (plaintiff or defendant), or the lawyer for a party. The server cannot be an employee or director/ officer of any party. If you have safety concerns, have the sheriff serve the defendant.

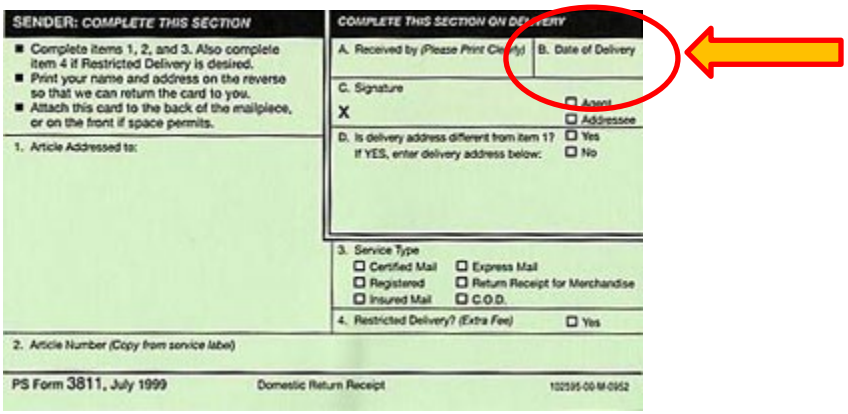
*competent means a person who can understand, remember, and tell others about an event

A ***Certificate 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

2. **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. The process server must also mail a copy of the papers (with a statement of the date, time, and place that the papers were served) to the respondent by first class mail. Make sure the process server completes a ***Certificate of Service***. The date of service is the day the first class mailing is put in the mail.

3. **<u>Office Service:</u>** The process server may leave the papers with someone *in charge* of the defendant's office or normal workplace. The process server must also mail a copy of the papers (with a statement of the date, time, and place that the papers were served) to the respondent by first class mail. Make sure the process server completes a ***Certificate of Service***. The date of service is the day the first class mailing is put in the mail.

4. **<u>By Mail:</u>** Send a copy by certified mail, return receipt requested, 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 ***Certificate of Service by Mail***. 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 the day the defendant signs the green receipt card.


SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

<u>Proof of Service</u>
The Certificates are your <u>proof of service</u>. An original *Certificate of Service* or *Acceptance of Service* **must** be filed with the court for your case to proceed, regardless of the method of service.

If proof of service is not filed within **63 days** of filing your *Claim*, your case may be dismissed without notice to you

THE DEFENDANT CAN …

<u>Pay the Claim</u> within 30 days of receiving service. This includes your court fees and costs. Payment should come directly to you. Defendant may provide proof to the court that the claim is paid, and you may file a notice with the court to dismiss your claim. You are free to settle with the defendant for any amount at this point. If you are suing to return property, the defendant can return the property to you.

Or

<u>Deny the Claim</u> – A defendant who does not agree with any part of your claim can file a response within 30 days of service denying the claim and requesting a hearing or jury trial. Defendants may also file claims against you called "counterclaims." Counterclaims must be related to the transaction or event that your claim is about. Jury trials are available only if the amount of *either* the claim *or* counterclaim is over $750, including prejudgment interest, fees, and costs.

If the defendant denies the claim, you will be notified by mail of the date and time to appear for a hearing. If you cannot appear at the time set, you must give a good reason *in writing* to the court at least **14** days before the hearing date.

If the defendant demands a jury trial, you must file a formal complaint within 20 days after the court sends you notice to do so. If you don't, the case will be dismissed and you may have to pay the defendant's fees plus a prevailing party fee. Be aware that additional fees will be due from you. You should see a lawyer. The court does not provide forms or samples of formal complaints.

IF THE DEFENDANT DOES NOT RESPOND

If the defendant does not file a response within 30 days of the date of service, you can ask the court to grant you a default judgment. This means that you win because the defendant did not respond. You must file a request for default judgment with the court within 51 days from the *date the proof of service was filed*, or your case may be dismissed without notice to you. You may have to re-file your claim and pay filing fees again if this happens.

For public body defendants – you must send a notice of your intent to apply for default to the defendant before filing for default. For state agencies you must also send a copy of the notice to the Attorney General. The court cannot issue a default less than 10 days from the day you serve the notice on the defendant (and the Attorney General if necessary). You must formally serve this notice according to Oregon Rule of Civil Procedure 9. You must also file a proof of service with the court.

Fill out the ***Motion for Default Judgment & Defendant Status Declaration***, and complete a ***Small Claim General Judgment***. File both with the court clerk. The prevailing party fee is listed at ORS 20.190.

If you request more than 9% post-judgment annual interest, you must provide the court with a copy of the contract at the time you request a Default Judgment

You must provide a *Declaration of Non-Military Service* before the court can order a default judgment. This is part of the ***Motion for Default Judgment***. If the defendant is in active military service, you cannot get a default judgment unless the servicemember has waived protection under the Servicemember's Civil Relief Act. This federal law starts at 50 U.S.C. § 3901. Your local law librarian can help you find it, or go to *www.law.cornell.edu*[*] (under *Get the Law* click *U.S. Code*, then click *Title 50* and *Chapter 50*). SCRA does not apply to all military servicemembers at all times.

If the defendant is in the military, you should see a lawyer before trying to get a default judgment. If a default is not done properly, the defendant can re-open the case after returning from service. **Be aware** that if you knowingly make false statements about the defendant's status, you may face both federal and state penalties.

If you know the defendant is *not* in the military, you must state *facts* that explain how you know. Some things that are *not* supporting facts are: he has long hair, he has problems with authority, she does drugs, she's too old, or he is not a U.S. citizen.

If you have the defendant's Social Security Number or date of birth, you can go to the Department of Defense's website at *https://scra.dmdc.osd.mil/scra/#/home* to find out if the defendant is in

[*] This is an outside site maintained by Cornell University. The Oregon Judicial Department is not responsible for any information on this site. Links may have moved.

active service. This site can give you a free statement of service status that you can print out (called a "certificate of service" on the website). Attach this statement, or a printout of the screen, to your motion. You can also call 571.372.1100 for military verification. Put the date and the name of the person you spoke with on your motion. If you don't have the Social Security Number or date of birth, commercial websites may be able to provide information.

If you don't know whether the defendant is in the military and have checked the website, or don't have the necessary information, mark "I am unable to determine whether this person is in military service" and add any facts that you *do* know. The judge will decide whether to grant the default.

YOU ARE STRONGLY ADVISED TO TALK TO A LAWYER IF DEFENDANT IS IN THE MILITARY! Contact the Oregon State Bar at the number above for help finding a lawyer.

* * * * *

The court will send you a notice telling you whether your default was granted

MEDIATION

Many courts have mediation programs for small claims. Some may require mediation before a judge will hear your case. If a defendant files a response denying the claim or making a counterclaim against you, the court may schedule mediation for *both* parties. Mediation is confidential.

Mediation has many benefits:
Mediation brings all of the parties together to discuss the dispute with a trained, neutral mediator. Mediation offers a last chance to maintain control over the outcome of the dispute before turning it over to a judge. Remember, no matter how right you think you are, you may not win the case.
A mediated agreement is enforceable once a judgment is entered.

If mediation is unavailable or if you are unable to resolve the dispute through mediation, a trial will be set. Be prepared to present your case at the date and time on your notice of trial.

PREPARING FOR TRIAL

Small claims trials are informal so that the parties can handle their own cases. Lawyers *cannot* appear without special permission of the court. The plaintiff first, and the defendant second, will present sworn testimony, evidence, and witnesses to the judge. The judge is only interested in *facts*. Your testimony should be brief and to the point. You may use written notes, but do not expect the judge to read a written statement.

You, as the plaintiff, must prove your case. The defendant must prove any counterclaims (counterclaims are claims the *defendant* has against *you*. They are NOT defenses to *your* claims against the *defendant*). Come prepared with factual evidence like receipts, a written contract, police reports, witnesses, etc.

<u>Bring the following to support your claim:</u>
Records, documents, bills, original contracts, photos, written repair estimates, etc. Make copies of any material that you may wish to submit to the court and bring the copies AND the originals to court. You may also want to bring copies for the defendant's reference.
On the day of your trial, be sure to allow plenty of time to get through security and find your courtroom. Be prepared to present your case at the time listed on your trial notice.

Anything you present to the court may be viewed by the other party and may become part of the public record. It may be possible to protect certain kinds of information from disclosure. Talk to a lawyer if you are concerned.

COURTROOM RULES:

**Appropriate dress is required. See UTCR 3.010 and the local court rules. The judge may ask you to leave the courtroom if you are not dressed appropriately.*
**Caps and hats must be removed upon entering the courtroom*
**Food and drinks are not allowed in the courtroom*
**Weapons are not allowed anywhere in the court building*
**Pagers, cell phones, and all other electronic devices that may disrupt court proceedings must be turned off (not just silenced, because signals interfere with recordings)*
**Audio or video recording is not permitted without advance permission of the judge*

JUDGMENT

Once your trial is over, the judge will make a decision. You could:

- Lose the case. You cannot collect money from the defendant if you lose.
- Win the full amount of your claim
- Win some of your claim, but not all of it
- Win either the full amount or some of the amount, and lose against a defendant's counterclaim.
  - Generally, if you and the defendant both asked for money, the amount you lost (counterclaims) will be subtracted from the amount you won.
  - If the counterclaim is for *more* than you won, then you may win your claim, but still have to pay the defendant money. For example, if you claim $100 and the counterclaim is for $150 and the judge decides that you both win, then you will have to pay the defendant $50 ($150 counterclaim - $100 claim = $50).

The judge will tell you who has to fill out the ***Judgment*** form. Then the *Judgment* form has to be given to the judge to sign. This form says how much the award is for, and who gets paid (if anyone).

The "judgment creditor" is the person who gets paid, and the "judgment debtor" is the person who has to pay

The party who wins is the prevailing party. The prevailing party may be entitled to additional money called a "prevailing party fee." The judge may tell you how much the fee is, or you can look it up at ORS 20.190. Write that amount in the "prevailing party fee" box.

NOTE: There is NO APPEAL from a Small Claims judgment. The judge's decision is *final*.

HOW TO COLLECT AFTER JUDGMENT

Demand Letter

Once you receive your notice that the judgment was entered, you must send the defendant a written demand for payment. This letter must be sent by certified mail, return receipt requested. The Oregon Judicial Department does not provide forms for demand letters.

Keep a copy of the demand letter and the receipt card showing the recipient's signature. Your demand letter should say that you are making a demand for payment and give the debtor the total

balance due and a deadline (usually 10 – 30 days). The judgment will give you the total amount the court entered as due to you.

If you are still not paid after sending the demand letter, several options are available to you. Go to *www.courts.oregon.gov* for more information.

SATISFACTIONS

A "Satisfaction" is a form that tells the court that your judgment has been paid (satisfied). You MUST file a ***Satisfaction of Judgment*** when you have received full payment on the money award portion of your judgment. You may also file a *Satisfaction of Judgment* anytime you receive a payment. A "partial satisfaction" means you have received payment, but not the full amount. A "full satisfaction" means the award is paid in full. You must also send a copy of the *Satisfaction of Judgment* to the other party. *Satisfaction of Judgment* forms are available online or at the court, and there is no fee to file this form.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

_____; _____ Plaintiff/Petitioner

v.

_____; _____ Defendant/Respondent

Case No: _____

ACCEPTANCE OF SERVICE

I am the ☐ Plaintiff/Petitioner ☐ Defendant/Respondent in this matter.

On (*date)* _____ I received a true copy of *(check all that apply)*:

☐ Petition
☐ Claim
☐ Complaint
☐ Summons
☐ Information on mediation
☐ Other: _____

And for Domestic Relations cases:

☐ Notice of Statutory Restraining Order Preventing Dissipation of Assets
☐ Notice of CIF *(Confidential Information Form)* Filing
☐ Information on continuation of insurance coverage (COBRA)
☐ Order to Show Cause re: Modification with Motion and Declaration
☐ Statement of Assets and Liabilities
☐ Uniform Support Declaration
☐ Other forms: _____

I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use in court and I am subject to penalty for perjury.

_____ Date

_____ Signature

_____ Name (printed)

_____ Address City/State/Zip Telephone

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

_____; _____
Plaintiff

v.

_____; _____
Defendant

Case No. _____

CERTIFICATE OF SERVICE BY MAIL

(Small Claim)

I am the Plaintiff in this case

I certify that on *(date)* _____, I mailed a true copy of the *Small Claim and Notice of Claim* by certified mail, restricted delivery to defendant only, to Defendant (*name*)_____ at the following address: _____

_____

_____

The Return Receipt is attached displaying Defendant's signature

I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use as evidence in court and I am subject to penalty for perjury.

_____ _____
Date Signature

_____
Print Name

_____
Contact Address City, State, ZIP Contact Phone

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

Case No: _____

_____;
Plaintiff

v.

_____;
Defendant

CERTIFICATE OF SERVICE
(ORCP 7D(2))

☐ (a) Personal Service
☐ (b) Substitute Service
☐ (c) Office Service
☐ (d) Service by Mail

I, *(name)*_____, declare that I am a resident of the state of _____. I am a competent person 18 years of age or older and not a party to or lawyer in this case. I certify that the person served is the person named below.

I served true copies of the original *Petition*, *Claim*, or *Complaint* and *Summons* (with attached notices of mediation and other information provided by the court clerk) and: *(name any additional forms served)* _____
_____

by (check a, b, c, or d and complete all information):

(a) ☐ **Personal Service** on *(date)*_____, at _____ a.m./p.m., to {☐ Plaintiff ☐ Defendant } _____ (*name*) in person at the following address _____ in the County of _____ _____, State of _____.

(b) ☐ **Substitute Service** on *(date)*_____, at _____ a.m./p.m., by delivering them to the following address _____ in the County of _____, State of _____ . Delivered to (*name*)_____ _____, who is a person age 14 or older and who lives there.
(*Complete the section below only if the server also did the follow-up mailing required by ORCP 7D(2)(b). If a person other than the server did the follow-up mailing, that person must complete a separate Certificate of Service Mailing.)*

☐ On *(date)*_____, I personally deposited a true copy of the same documents served with the U.S. Postal Service, via first class mail, in a sealed envelope, postage paid, addressed to the party to be served: ☐ Plaintiff ☐ Defendant _____ _____(*name*), at the party's home address listed above, together with a statement of the date, time and place that the documents were hand-delivered to the party's dwelling (residence).

(c) ☐ **Office Service** on *(date)*_____, at _____ a.m./p.m., by delivering them to the office of the party to be served, located at: _____ _____ (*address*), during normal working hours for that office, where I left the documents with _____(*name*), who is a person apparently in charge, to give the documents to the party to be served.

(*Complete the section below only if the server also did the follow-up mailing required by ORCP 7D(2)(c). If a person other than the server did the follow-up mailing, that person must complete a separate Certificate of Service Mailing.)*

☐ On *(date)*_____, I personally deposited a true copy of the same documents served with the U.S. Postal Service, via first class mail, in a sealed envelope, postage paid, addressed to the party to be served: ☐ Plaintiff ☐ Defendant (*name*) _____ _____, at the party's: ☐ home address at: _____ _____, ***OR*** ☐business address above, together with a statement of the date, time and place that the documents were hand-delivered to the party's office.

(d) ☐ **Service by Mail, Return Receipt Requested** on *(date)*_____, I personally deposited **two** true copies with the U.S. Postal Service. **One** by first class mail, and the **other** by certified or registered mail, Return Receipt Requested, or by express mail, postage paid, addressed to the party to be served: ☐ Plaintiff ☐ Defendant _____ (*name*), at the party's home address located at:_____ _____(*address*). *(NOTE: If mailed Return Receipt Requested, the return receipt must be attached to this Certificate of Service.)*

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and I am subject to penalty for perjury.

_____ _____

Date Signature of Server

_____

Print Name

If person serving is NOT a sheriff or sheriff's deputy, address and phone number of server:

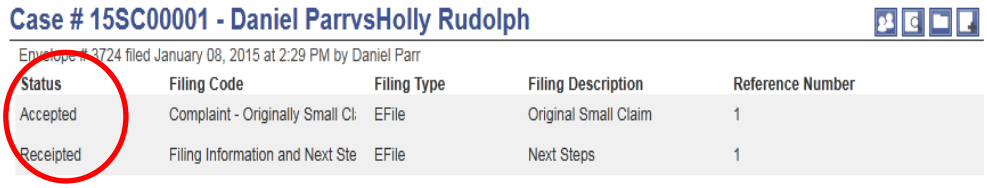
_____

_____

EFILING INFORMATION

If you chose to electronically file your forms there are a few things you need to know.

1) eFiling happens through the Oregon Judicial Department File and Serve (File and Serve) system. Your Guide and File account gives you access to File and Serve, you don't have to register separately.
2) eFiled documents can take up to 3 business days to process.
3) You can view the status of your filing by logging into the File and Serve website at https://oregon.tylerhost.net/



The statuses you might see are:

a. Submitting - The filing is in the process of being submitted to the court.
b. Submitted - You filing has been submitted to the court and is waiting for court staff to review your filing for acceptance.
c. Under Review - The court has begun reviewing your filing.
d. Accepted - The court has accepted your filing.
e. Rejected - The court has rejected the filing because it fails to comply with court rules or procedures. Review the rejection email for details. Speak to a lawyer if you don't understand why your filing was rejected or don't know how to fix it. NOTE: be aware of any filing deadlines that may apply to your case. Court staff cannot give you legal advice. If you have a deadline coming up, talk to a lawyer about how to handle your filing.
f. Processing - The filing is being added to the court's case management system.
g. Receipted - The filing is not a "filed" document, just information that is not sent to the court or part of the case record.

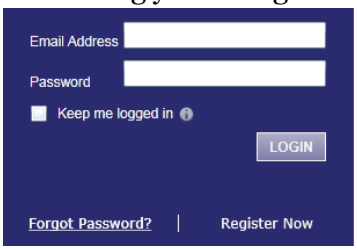
4) You will receive an email from File and Serve when your filing is submitted, and when it is accepted or rejected.
   a. If your filing is rejected your will need to resubmit your filing. OJD recommends you deliver a hard (paper) copy of your filing to the court if your eFiling is rejected.
   b. Emails come from no-reply@tylerhost.net. Make sure these emails do not go to your spam folder. Ask your internet or email provider about how to do this.
5) You can return to File and Serve directly to eFile your proofs of service and other documents later in your case. To learn more about how to use File and Serve go to https://oregon.tylerhost.net/ and watch the videos under the **TRAIN** section. There are specific court rules that apply to electronic filings. Those rules can be found at: www.courts.oregon.gov/utcr, under UniformTrial Court Rules, Chapter 21.
6) You can also sign up to receive eService notifications through File and Serve. Follow the instructions on the next page. EService is NOT for court notifications, it allows other parties to serve you by email when they file something in this case. More information is below.

HOW TO SIGN-UP FOR ELECTRONIC SERVICE

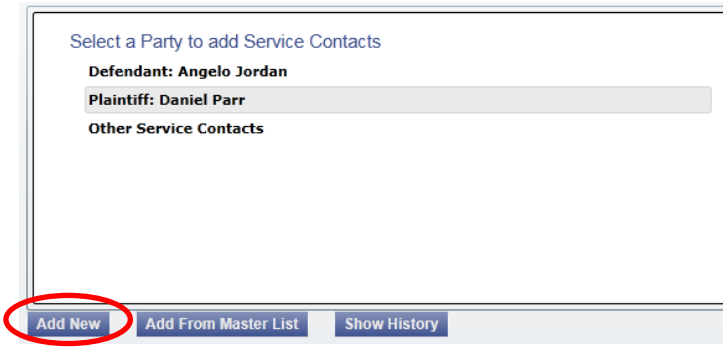
After you submit your filing electronically, you can choose to receive service from other parties on the case by email. File and Serve will send you emails when another party submits a response, motion, or other filing with the court and chooses to eServe you.

Follow these steps if you want other parties to be able to serve you electronically[1]:

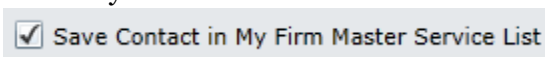
1) Go to the File & Serve website at https://oregon.tylerhost.net/
2) Sign into File and Serve using the same user name and password you used when submitting your filing in Guide and File.



3) File and Serve will display a list of your filings.
4) Select the **Service Contacts** button  next to your filing to add your service contact information to the case. The *Manage Case Service Contacts* box will appear.
5) Select your name and click **Add New**.



6) Add your first and last name, and your email address. This is the email where you will receive *service* information from other parties. The court cannot send you notice of hearings or other information electronically.
7) To save your contact information to use in future cases select



8) Click **Save.**
9) You are now signed up to receive service of documents by email for that case.

[1] Note: eService will only apply to individual cases where you have selected eService by following these directions. If you have other cases – even with the same parties – you will continue to receive non-electronic service.