

Limited Action Suits

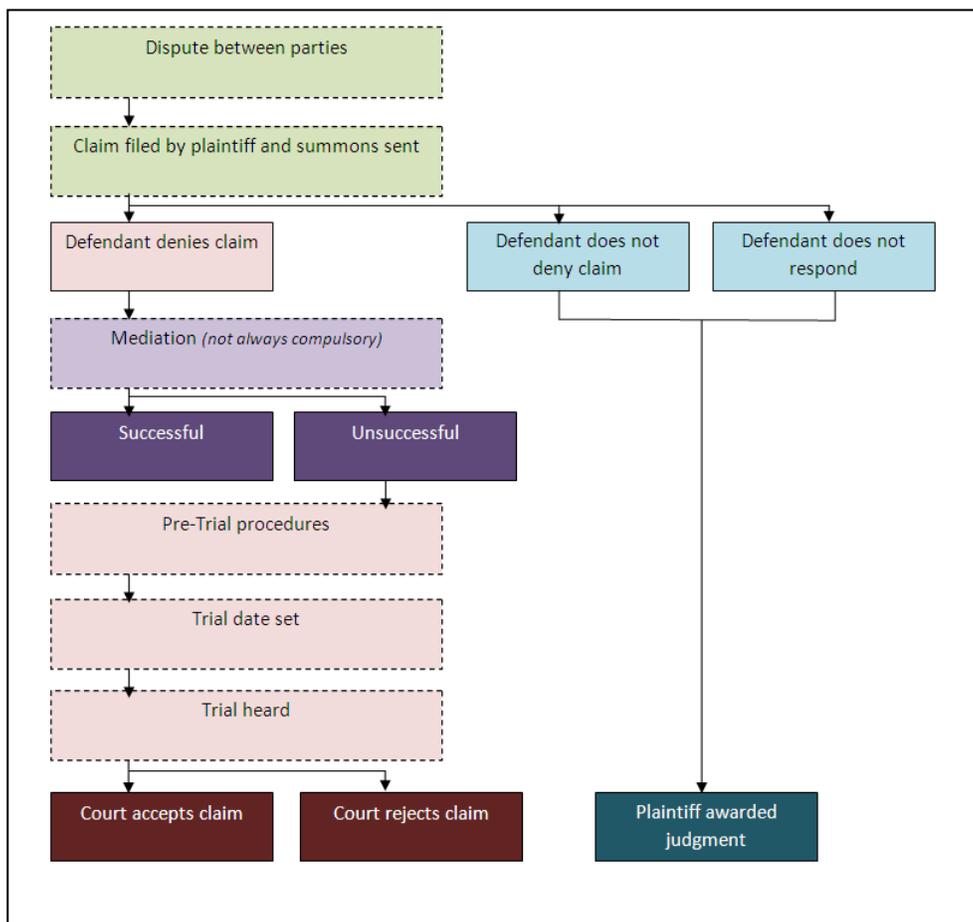
In General:

→ What is a limited action suit?

Per chapter 61, Limited Action cases in Kansas are civil cases where the dollar amount does not exceed \$25,000.00, unless it is an unsecured debt, in which case it can be any amount.

→ What is the procedure for a Limited Action case?

The diagram below outlines generally how cases proceed in Limited Action court. We will discuss different steps in more detail on the next page.



→ Was is the purpose of this document?

This document will take you through **6 steps of a Limited Action case**: 1. **the complaint**, 2. **the summons**, 3. **the answer**, 4. **the pre-trial**, 5. **the trial**, and 6. **the judgment**. At the end of the document, there are also special instructions for **Shawnee County dockets**.

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The Complaint:

- A lawsuit begins when the person bringing the suit files a **complaint**. This first step begins what is known as the **pleadings** stage of the suit.
- The person filing the suit is often referred to as the **plaintiff**; the person or entity against whom the case is filed is often referred to as the **defendant**. In some areas of law, such as domestic relations, the person filing the complaint is the **petitioner**, and the person against whom the case is filed is the **respondent**.
- **Complaint** (or **petition** or **bill**). Probably the most important pleading in a civil case, since by setting out the plaintiff's version of the facts and specifying the damages, it frames the issues of the case. It includes various **counts** - that is, distinct statements of the plaintiff's cause of action - highlighting the factual and legal basis of the suit.

The Summons:

- The plaintiff also files with the court clerk a request that a **summons** (or notice) be issued to the defendant. In many jurisdictions, the summons will be served by a deputy sheriff or special process server. In other jurisdictions, it may be served by mail. It notifies the defendant that a lawsuit has been filed against him or her.
- The summons will state the time when the law requires the defendant to appear or file an answer in response to the petition. It also notifies the defendant that in case of their failure to appear or file an answer, judgment by default will be rendered against them for the relief demanded in the petition. In other words, not showing up is the equivalent of agreeing to the allegations and the relief sought.

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The Answer:

The answer really should be divided into 2 sections: **Appearance** and/or **Answer**.

- If you file an answer before your appearance date, you do not need to appear on that date. If you agreed in your answer to the charges made by the plaintiff, judgment will be taken against you for the amount in question. If you disagreed, you will receive a new order to appear and date for pre-trial.

 - If you did not file an answer by that date, you must appear in court. If you do not appear or file an answer by that date, judgment will be taken against you. If you appear to contest the charges, you will have 14 days after that appearance to complete an answer and file it with the court.
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- **Answer:** This statement by the defendant usually explains why the plaintiff should not prevail. It may also offer additional facts, or plead an excuse.
 - You will need the complaint the plaintiff filed.
 - You have **20 days** to file your Answer if you were served in person, or 30 days if you were served another way.
 - The Plaintiff must get a copy of your answer within 20 days after you were served the complaint.
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- On the “_____ Division” line, write in where the court is located.
 - Write in the docket number on the “Docket no. _____” line. You can find this number on the complaint that the Plaintiff sent you.
 - Make two copies of everything. **Keep a copy for yourself.**

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- In the “**Answer**” section you agree or disagree with each point the creditor made in their complaint. Not answering is the same as agreeing. If you do not answer a point, the court and the plaintiff read it as if you agree. If you do not agree, make sure you say you disagree, or you do not know:
 - i. Read each line** of the complaint. Notice that each paragraph has a number. ii. If you disagree with everything in the plaintiff’s complaint check blank 1.
 - ii. If you do not agree** or you do not know about some of the points in the plaintiff’s complaint check blank 2. List the paragraph numbers in the complaint that you disagree with or you do not know.
 - iii. If you agree** with any of the paragraphs in the plaintiff’s complaint check box 3 and list the paragraph numbers you agree with.

For example: Kerry does not agree that she owes money to the Bank or with the amount they say she owes. She checked the lines that state this. She does agree with line 1 of the complaint that states her name is Kerry Timberland.
- The “**Affirmative Defenses**” Section is where you say the things that the Plaintiff did wrong. You will have to prove these things at trial. If you can prove them, it can help you lower or wipe out the debt you owe the Plaintiff. Check all that apply to you.
- You must give your answer to the plaintiff the same day you fill out the **certificate of service**. If the plaintiff’s attorney’s address is on the summons, send a copy of your answer to the attorney. Mail or deliver the original answer to the court clerk. You have five days from the day you gave a copy to the plaintiff to get the original to the court. After you file your answer, you should get a **hearing date** from the court.
- You can also supplement your answer to back up your claim. In your answer, you can say “copies of X will be provided in a **supplemental answer** to the attorney. The supplemental answer should be sent to the opposing attorney with a notice of service.

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- The **supplemental documents** should be your proof.

For example: If you are a victim of identity theft, you could call your bank and get an affidavit saying the same (Be specific, however. For example, specify which checkbook was used by someone else). You could also file a police report and send it with your supplement (Many debt collectors have insurance, so they can turn that in as a claim). Some collectors may even have hand-writing analysts. You could send a document with your signature on it 10 times and a copy of your driver's license for comparison.

- **Counterclaim.** The defendant may file a counterclaim, which asserts that the plaintiff has injured the defendant in some way, and should pay damages. ("You're suing me? Well then, I'm suing you.") It may be filed separately or as part of the answer. If a counterclaim is filed, the plaintiff must be given the opportunity to respond by filing a reply.

The Pre-Trial:

- When responding to a summons and petition, you must first complete the defendant pre-judgment information sheet, check in with the clerks, talk to the plaintiff's lawyer (if present), and return the sheet to the court clerks.
- If you "**agree**" that you owe the amount claimed in the petition, a judgment will be entered against you. There will be no trial.
- If you plead "**no contest**", you are not agreeing that you owe the amount asked for in the petition, but do not wish to have a trial. If

you plead no contest, a judgment will be entered against you. There will be no trial.

- If, however, you "**disagree**" with the amount claimed in the petition, please discuss the case with the plaintiff's attorney. If no agreement is reached, a **pre-trial conference** with a judge will be scheduled.
- You will get a **notice** from the clerk with the date of your pre-trial conference. Do not lose the notice. It will be the only notice you receive.

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- At the Pre-Trial Conference you will meet with the judge and the other lawyer to discuss the case. If it is not settled, the case will be set for trial.
- Pre-trial hearings shall be held **at least 14 days** after the date of the defendant's appearance and/or answer. All parties will be notified of the date, time and place for the pre-trial hearing.
- **Before your pre-trial meeting**, provide the other party with copies of all documents which support the petition or answer and an identification of all witnesses who will testify at trial to support the same.
- **Remember:** clerks and judges cannot give legal advice.

The Trial:

- **If** the issue cannot be settled in pre-trial, the judge may set the case for trial.
- **At trial**, the parties present evidence in support of their claims or defenses to a jury and/or judge.

The Judgment:

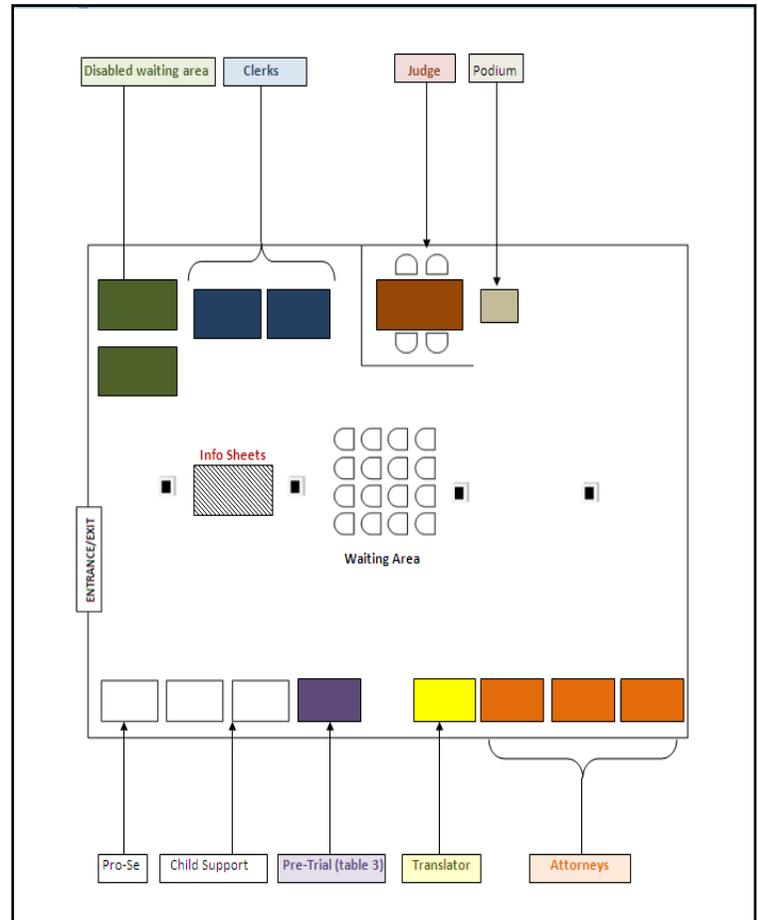
- **If you agreed** to the charges against you or pled "no contest", the judgment will be for the plaintiff.
- **If you disagreed** to the charges and the issue goes to trial, a judge or jury will decide, based on the evidence presented, whether judgment will be for the defendant or the plaintiff.
- A party may later challenge a verdict through an **appeal**.

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Special instructions for Shawnee County limited action docket:

- The Shawnee County limited action pre-trials usually start at 8am in the Expo Center Agricultural Hall at 17th and Topeka on Tuesdays. Check in at 7:30 am to be able to speak to the opposing attorney ahead of time and try to work something out.
- Clerks are only there until pre-trials are over. Get there at 8 and sign in, don't assume you can come in at 9 and be okay. There may not be anyone there anymore.
- You can consolidate dates if you have more than one action against you (ask for "consolidation" so you don't have to come every week)
- Warrant: If there's a warrant out, Shawnee County tries to apply bond money towards your debt. If there's a bench warrant out for you arrest, there's an auto-recall in Shawnee County if you show up for your limited action issue so that you're not picked up by the sheriffs. If you don't show up, the bond is forfeited (depending on the county, it's either forfeited to the state or towards the debt).
- Shawnee County always has a Spanish interpreter. In other counties, you must request an interpreter ahead of time.
- If you're there for a pre-trial in Shawnee County, go straight to the podium so you're not late. Don't stop at the clerk table.



Shawnee County Limited Action Docket
--Agricultural Hall map--