

Have you been sued by a company that says you owe them money?

and

Does the court paper say it is on a "Sworn Account"? Or does it have a paper called an "Affidavit"?

STATE OF TENNESSEE, COUNTY OF DAVIDSON

To Any Lawful Officer to Execute and Return:

Summon John Lee Smith

to appear before the Metropolitan General Sessions Court of Davidson County, Tennessee, to be held in Courtroom 5D, Justice A.A. Birch Building, 408 Second Avenue North, Nashville, Tennessee, on January 4, 2007 at 8:45 a.m., then and there to answer in a civil action brought by the Plaintiff(s) for:

ABC Credit Company for payment not received in the amount of \$6,085.43 together with interest and attorney fees, if applicable, as evidenced by the Sworn Account attached hereto & the cost of this action less any payments received & expenses as they continue to accrue.

under \$ \$25,000.00 Dollars

ABC CREDIT COMPANY
V.
JOHN LEE SMITH

AFFIDAVIT OF DEBT AND VERIFIED BILL OF PARTICULARS

The undersigned being first duly sworn according to law, deposes and says that she is familiar with the policies and practices, as well as the books and records of the Plaintiff with respect to the matters stated herein, and based on information and belief states as follows:

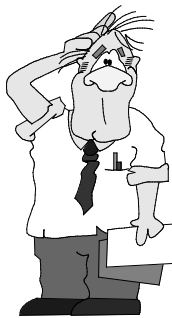
If so, this booklet may help you.

What is a sworn account?

It's a lawsuit with a signed paper from the company you owe. The law lets some businesses sue you without proving that you owe the debt. They just sign a paper saying they swear that you owe the money.

But you have the right to ask for the paperwork that proves it. What good will that do? It may save you from having a judgment taken against you.

- The company may have **lost the paperwork**. This happens a lot if the debt is several years old. What if you ask for proof and the company doesn't have it? Then the lawsuit should be dropped.



Or

- The paperwork may show that the company has **waited too long** to sue. If so, you can ask the judge to dismiss the case.

What if I want to make the company prove I owe the money? Or, what if I think I don't owe that much?

You should file a **Sworn Denial** and go to the hearing on the court date. A copy of a Sworn Denial is with this paper.

The company will then have to prove how much you owe. What if they can't prove it? Then the company should drop the lawsuit. Or the judge should dismiss it.

Has it been over 6 years since you last paid or promised to pay? Then the company has waited too long to sue. You should file a **Sworn Denial**. Go to court. Tell the judge you think they have waited too long.

Warning! Before the hearing, the company's lawyer may ask you to promise to pay the debt.

You **don't** have to talk to their lawyer in the hall. Don't make a new promise if:

- You want them to have to prove you owe the money, or
- You think you don't owe that much, or
- You think it has been more than 6 years since you made a payment.

What if you make a new promise to pay? Then the creditor gets 6 more years to collect.

Also, lawyers often want you to agree to bigger payments than you can afford. You **don't** have to agree to more than you can pay. See our booklet, **How to keep your paycheck from being garnished**.



How do I file a Sworn Denial?

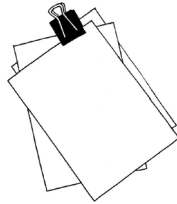
Fill out the paper that came with this one. Don't sign it until you can sign it in front of a Notary. Can't find a Notary? Then don't sign until you go to the Court Clerk's office. They will have a Notary. File the paper at the Clerk's office at the court where you were sued.

What happens after I file the Sworn Denial?

You will have to go to court on the hearing date. What if the case is moved to a later time? Then you will have to go on the new date. You may have to tell the judge you want the company to prove the debt.

Ask for these papers:

- The Contract you signed
- The Contract showing everything you agreed to, like late fees and interest rates. **Example:** You signed up for a credit card because the interest rate was only 10%. The contract should say 10%; and
- All the bills they sent to you. Make sure it shows all payments you made. Make sure the late fees and interest charges are correct.



The creditor's lawyer will often give you some records. What if you think the lawyer didn't give you all the papers you want? You have the right to tell the judge. The judge can order the lawyer to give you the papers you need.

What if I owe the debt and don't want to fight about it?

Then you don't have to go to court. If you don't go, the company wins. This is called a **default judgment**. The company won't have to show records to prove how much you owe.

Will I be arrested if I don't show up for court?

No. But, if you get a subpoena (suh-pea-nuh), you must go to court.

What is a judgment?

It is a decision by the court. Usually, it says you owe

a certain amount of money to the company. Once they have a final judgment, the company may take legal steps to collect the debt.

What should I do if the company gets a judgment against me?

File a paper with the court called a **Personal Property Exemption Claim**. This will protect your personal belongings and bank accounts. You don't need a lawyer. Try to file it within 10 days. Find out how from our booklet **Have You Been Sued?**

Can they garnish my paycheck? Maybe.

Garnishing means taking money out of your paycheck before you are paid. The good news: the law may protect you from garnishment. Do you get \$196.50 a week or less after taxes are taken out? Then the company can't take anything from your paycheck.



What if you get more than \$196.50 a week? Then 10 days after the court date, the company may garnish your paycheck. The good news: you can stop a garnishment. One way is to make a time payment agreement with the company. Or, you can file a **Slow Pay Motion** with the court. Find out how from our booklet, **How To Keep Your Paycheck From Being Garnished**.

Can the company take my Social Security/SSI check? Maybe.

Do you get your check directly and don't have a bank account? Then the creditor can't take it.

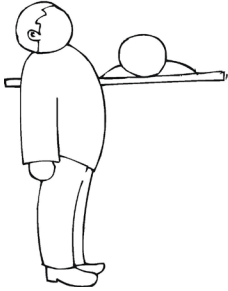
Is your money in a bank account? Then you need to file a paper with the court to protect your money. Within 10 days after the court date, file a **Personal Property Exemption Claim**. Be sure to list your bank account on it. Find out how from our booklet **Have You Been Sued?**

Can I appeal if I don't agree with the judgment?

Yes, but you only have 10 days from the court date to appeal. The 10 days includes weekends and holidays. You may have to pay an appeal bond. Are your income and assets very low? Then you may be able to

file a pauper's oath. If you do, you won't have to pay the appeal bond. The court clerk can tell you about the pauper's oath.

What happens if I appeal?



The case goes to a higher court. It gets treated like a new case. There is usually a time limit to set a date for a hearing. Most people need a lawyer for this. What if you lose the appeal? You will owe more court costs and may also owe lawyer fees. Usually Legal Aid only does appeals if we took the case before the appeal.

Legal Aid Society

1-800-238-1443

It's a free call.

On the internet at **www.las.org**



L E G A L A I D S O C I E T Y
OF MIDDLE TENNESSEE AND THE CUMBERLANDS

NOTE: This information cannot take the place of advice from a lawyer. Each case is different and needs individual legal advice.

IN THE _____ COURT
FOR _____ COUNTY, TENNESSEE

Plaintiff

vs.

CASE NO.

Defendant

SWORN DENIAL

Comes the defendant, _____, and for plea denies that s/he is liable to the plaintiff in this case for the amount sued for on the sworn account herein, and demands strict proof thereof.

Defendant

Sworn to and subscribed before me this

_____ day of _____, 20____.

Notary Public

My commission expires: _____