



SMALL CLAIMS NEWSLETTER

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Some people think that going to court is difficult or frightening, but it doesn't have to be. Many disputes that you haven't been able to resolve by other means can be decided in small claims court. This is the first in a series of newsletters to inform our clients of how to get the most out of using small claims court.

What Is Small Claims Court?

The small claims court is a special court where disputes are resolved inexpensively and quickly. The rules are simple. The hearing is informal. Lawyers are not allowed.



The claims are limited to disputes up to \$5,000. However, a claimant cannot file more than two small claims court actions for more than \$2,500 anywhere in California

during any calendar year. For example, if you file a claim for \$3,000 in February of 1995, and another claim for \$4,000 in March of 1995, you can't file another claim for more than \$2,500 in any small claims court until January 1, 1996. But you can still file as many claims as you wish for \$2,500 or less.

The filing fee is only \$35.00. (Multiple filers--claimants who filed 13 or more claims within the previous 12 months--pay \$50.00 per claim.)

Who Can File or Defend a Claim?

With certain exceptions, anyone can sue or be sued in small claims court. Generally, all parties must represent themselves. A person or an entity (for example, a corporation) that files a small claims action is the **plaintiff**.

One person can sue another person or a business. Businesses also can sue individuals or other businesses. However, one person can't sue on another person's case. In other words, *assignees* can't sue in small claims court. For instance, an attorney can't file a small claims case as **plaintiff** on behalf of a client.

Can Someone Else Represent You?

In most situations, the parties to a small claims action must represent themselves. As a general rule, neither attorneys nor non-attorney representatives are allowed to appear. However, in some situations, someone who is not an attorney can appear for and represent a party to a small claims action.



For instance; a corporation or other legal entity, other than a natural person, can be represented by a regular employee, an officer, or director, and a partnership can be represented by a regular employee, or a partner, but the representative of the corporation, partnership, or other entity can't be an attorney, or someone else whose job is to represent the party in small claims court.

Can Your Spouse Represent You?

Spouses may represent each other in small claims court *if* they have a joint interest in the claim or defense, *and* the represented spouse has given his or her consent. However, one spouse can't represent the other if the court decides that justice would not be

served. The represented spouse need not appear in court.

Have You Asked for the Money or Property?

Before you can sue in small claims court, you must first contact the other person or business, if it is practical to do so, and ask for the money, property, or other relief that you desire. In legal terms, you must make a demand on the other person. The demand may be oral or in writing, but it is a good idea to do it both ways. Always keep a copy of any written communication between you and the other person.

How Much Money Does Your Dispute Involve?



Small claims courts have limits--called *jurisdictional limits*--on the amount of money *damages* that a person can claim. The most you can claim is \$5,000. (See *What is Small Claims Court*, page 1.)

Think carefully about how much money to request. The judge will ask the plaintiff to prove that he or she is entitled to the amount that is claimed.

If your claim is over the small claims limit, you may file a case in municipal court and either represent yourself or hire a lawyer to represent you. Or you may choose to reduce or *waive* a portion of your claim, to stay within the small claims court limit. Once the dispute is heard and decided by the small claims court, your right to collect the amount that you waived is lost forever.

If the case is against a *guarantor*--someone whose liability is based on the acts or omissions of another--the maximum claim is \$1,500. The judge will know whether this limit applies to your case.

Where Do You File Your Case?



It is important to file your case in a proper court. In legal terms, you must file in a court with proper *venue*. Venue is an important legal protection that helps ensure that the defendant is given a reasonable opportunity to defend. This usually means that the

case must be filed in the court district in which the defendant lives. If the defendant is a business, the case ordinarily must be filed in the court district in which the business is located.

At the time you file your case, you must state why the venue you have chosen is proper. At the hearing, the judge will decide whether you filed your case in a proper court. If the venue isn't proper, the judge will *dismiss* your case *without prejudice* unless all the defendants are present and agree that the case may be heard.

In some cases, you may be able to file in a court district that is more convenient for you or your witness. For example, if the case involves the enforcement of a contract, the action may be filed in the district in which the contract was signed or in which the defendant agreed in writing to perform it.

Client Small Claims Court Experiences

By pooling the experiences of others, we can all learn from them & use them to our benefit when we go to small claims court.



Here are some examples of our clients' experiences in small claims along with our ideas for similar occurrences:

1. The judge ruled that the choice of venue for filing was incorrect & dismissed the case.

The criteria for choosing venue in this case was where the contract was to be performed. The courts have ruled that this can include the location where payments are due according to the invoice or statement. In this case the judge ruled that "most" of the activity occurred in the defendant's area including delivery of product & customer service. However, the invoices clearly stated that payments were due & payable at the plaintiff's office in the trial court's venue. Don't be afraid to tell the judge these details. You have nothing to lose.

2. The court continued the case due to an un-timely service. The judge ruled that substitute service was done 19 days prior to the trial date instead of the statutory 20 days

When looking at the proof of service, it was obvious that the service occurred 21 days prior to the trial date, not 19 as the judge determined. Again, the judge erred. Judges do make mistakes. Most will allow themselves to be corrected tactfully

Often we find the Defendant ready to settle our account upon arriving at the court & prior to appearing before the judge. Some of our clients have taken non-certified funds, usually in the form of a business or personal check, only to find the check to be returned NSF or to have a Stop Payment placed on it.

We suggest that you never accept a payment in non-certified funds when a suit has been filed unless there

is sufficient time prior to trial. This includes payment offers in the last few days prior to court.

If the debtor shows up in court with a company check for the balance, ask the judge to issue the judgment. When the check clears you can then satisfy the judgment.



Please send us any experiences you've had that you feel others can learn from. Send your letters to CRS, P.O. Box 1389, Simi Valley, CA 93062