



## SMALL CLAIMS NEWSLETTER

### Volume 1 Issue 2

*This is the second in a series of newsletters to inform our clients of how to get the most out of using small claims court.*

*In this issue we will talk about getting the most out of your day in court.*

#### **Preparing Your Case.**



While you're waiting for your hearing date, prepare your case as thoroughly as you can. Double check your facts. Ask important witnesses to attend the hearing and gather any evidence you think you may need. This may include invoices, statement of account, correspondence between you and the defendant, etc. Decide what you will say to the judge.

Organize your thoughts and evidence to make your side as easy as possible to understand. Consider preparing a written outline of the important facts and the points you intend to make to the judge. Try to think of the questions the judge might ask, and bring any available evidence that supports your answers. Also try to think of what the other party is likely to say, and what evidence he or she may bring.

By thinking ahead, you will be in a better position to present your case. Remember that judges are under pressure to process cases quickly, and you can help yourself by being well prepared. It is also a good idea to sit through a small claims court session before the date of the hearing. This will give you first hand information about the way small claim cases are heard in your local court

#### **On The Date Of The Hearing**

On the date of your hearing, schedule enough time to get to the court, allowing for possible transportation or parking delays. If you arrive late, your case may have already been dismissed. Try to arrive early so you can find the proper courtroom. Then relax, listen for announcements, and think about your case. A list of the day's small claims cases (called a *court calendar*), is usually posted outside the courtroom. If you don't find your name listed on the court calendar, check with the small claims clerk.

#### **Keep Communication Open**

For most people, a dispute, especially a lawsuit, is stressful. Be reasonable in your demands. Keep the lines of communication open. Even on the day of your hearing, it is not too late to settle your dispute.



If the parties settle the dispute before the hearing date, the plaintiff can file a ***Request for Dismissal*** with the court. If the dispute is settled on the day of the hearing, there may not be enough time to dismiss the case. In that event, both of you should attend the hearing, and tell the judge that you have settled the dispute. The judge can either dismiss the case or postpone the hearing to enable the defendant to pay the claim, or include the settlement agreement as part of a regular court judgment. If the agreement calls for *payment by installments*, it is best to include the settlement as part of the judgment. This means that the agreement will be enforceable with the court's

assistance, if either party doesn't live up to his or her promises.

### Hearings Before Temporary Judges

Most courts use *temporary judges* (sometimes called *pro tem judges*) to hear small claims cases. A temporary judge is an attorney who has been licensed to practice law for at least five years in California and who volunteers to assist the court by hearing certain cases.



On the day of the hearing, you may be asked to consent or *stipulate* that a temporary judge (rather than a regular judge or court commissioner) can hear and decide your case. Before a case may be heard before a

temporary judge, all parties who appear at the hearing must agree and give their consent. If either party does not consent, the clerk probably will reschedule the hearing to a later date when a regular judge or court commissioner is available.

If you are given the option of a hearing by a temporary judge, you should consider several factors. Many small claims *court calendars* are overcrowded, so it is possible that your hearing will be held on the scheduled day only if it is conducted by a temporary judge. Attorneys who serve as temporary judges have basic knowledge about law, although professional expertise and experience levels do vary.

### Presenting Your Case

Before the hearings begin, the judge or some other officer of the court will explain procedures. Listen carefully so you will know what to do. Everyone who will testify in the hearings will be asked to take an oath promising to tell the truth.



The court will then hear each case. As you listen to the other cases, you'll learn more about how to present your own case. Cases are not always called in the order listed on the court calendar, so be sure to stay in the courtroom.

When the judge is ready to hear your case, the clerk will call the names of all the plaintiffs and defendants in the case. You, the other parties, and any witnesses should then go forward to the table in front of the judge. Judges usually ask the plaintiff to tell his or her side first, and then the defendant. Some judges may begin the hearing by asking questions of each party to learn more about the facts or to cover areas the judge knows are important.

Usually, you'll have only a few minutes to explain your side, or answer questions, so be sure to present your most important points first. You can use a written outline or notes but try not to read a prepared statement. Be sure to have all your evidence and any important documents with you. Tell the judge that you have them, and ask the clerk or other court



officer to give them to the judge. If the judge needs to keep your evidence for review, ask how and when you'll get the items back.

Be brief in making your points. Most importantly, be truthful in everything you say. Do your best to be objective and unemotional. The judge will be interested only in hearing the facts about your dispute. Don't raise your voice, make insulting remarks about the other party or any witnesses, no matter how angry you are. During the hearing, speak to the judge and not to the other party.

Answer the judge's questions thoughtfully. If you don't understand the question, politely ask the judge to explain or ask the question another way. Remember, too, that the judge is trying to apply laws that you might not know about; don't get angry if the questions are on points you don't consider important. The judge's questions may be of great importance to your case.

Since the law requires that any award of money be "reasonable" in amount, the judge will want to know exactly how you decided on the amount you have claimed. You must be ready to explain how this figure was determined. If interest is also claimed, you should be prepared to show how it was calculated.

While the judge is asking the other party to explain his or her side of the dispute, don't argue or interrupt, even if you feel that what is being said is not truthful or accurate. Make a note to yourself as a reminder. The judge will usually give you time to reply.

### **Ask For Your Court Costs**



At the hearing, you should ask the judge to award your *costs* if you win. Costs are out-of-pocket fees and charges a party pays to file and present a lawsuit. Most judges award costs routinely to the winning party, but you

should ask the judge for them at the hearing. If you are awarded costs, the award is included in the judgment against the losing party.

### **Receiving The Judge's Decision**

After hearing from the parties who appear at the hearing, the judge will make a decision. The judge will base his or her decision on the evidence, the law, and common sense. The judge may rule for either the plaintiff or the defendant, or may award something to both.



Sometimes, the judge may decide the case immediately, announce his or her decision from the bench, and give the parties the judgment form -- called the *Notice of Entry of Judgment* -- in the courtroom. Other times, the judge may not decide the case until later. This is called *taking the case under submission*. If the judge takes the case under submission, you'll receive your Notice of Entry of Judgment in the mail. The judge may take the case under submission to review the evidence, research a

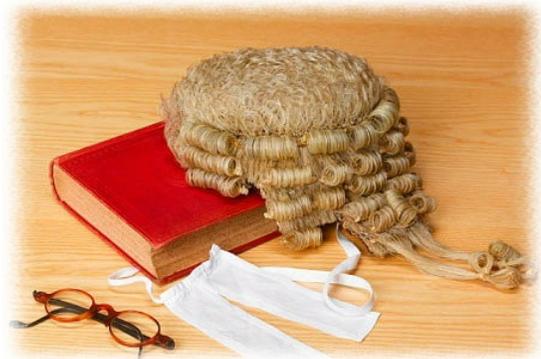
point of law, or consult with an expert. Also, if you forgot to bring an important document or other evidence to court (e.g., a written contract), the judge may allow you to bring it in promptly so that it can be reviewed before making a decision.

### **Judgment Against a Non-Appearing Party**

Sometimes one of the parties doesn't come to the small claims hearing. If the defendant doesn't appear, the key question is whether he or she received proper notice of the hearing. If the *Proof of Service* form shows that service was properly made, the judge will hear and decide the case, even if the defendant is absent.

However, a judgment isn't automatically awarded against a non-appearing defendant in small claims court. The plaintiff must still "prove" his or her case. If enough evidence is provided, the judge may award the plaintiff some or all of the amount being claimed. If the defendant is an active member of the armed forces, however, special rules apply before a judgment against a non-appearing defendant can be awarded.

If the plaintiff doesn't appear at the hearing and doesn't notify the court, the court has several options. The judge may reschedule the case, or may dismiss it without prejudice, or, if the defendant appears, may enter a default judgment against the plaintiff.



*Our next issue will talk about what happens after the small claims hearing has occurred.*