

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
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Patrick O'Donnell, Committee Counsel
Small Claims and Limited Cases Subcommittee
Hon. Mary Thornton House, Chair
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DATE: September 26, 2005

SUBJECT: Small Claims Forms: Increased Jurisdictional Limit of \$7,500 for
Natural Persons (revise forms SC-100, SC-101, and SC-150)
(Action Required)

Issue Statement

Two companion bills, Assembly Bill 1459 (Canciamilla) and Senate Bill 422 (Simitian), raise small claims court jurisdiction from \$5,000 to \$7,500 for actions brought by natural persons. The bills do not raise the jurisdictional limit for actions brought by others nor do they change the current law that limits a person to no more than two small claims filings exceeding \$2,500 in any calendar year. Three small claims forms that reference the current \$5,000 jurisdictional limit are affected and should therefore be amended to reflect the higher jurisdictional limit for natural persons.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2006, revise forms SC-100, *Plaintiff's Claim and ORDER to Go to Small Claims Court*; SC-101, *Attorney Fee Dispute (After Arbitration)*; and SC-150, *Information for the Small Claims Plaintiff*, to state that a natural person (not a business or public entity) may file a claim for up to \$7,500 rather than the current limit of \$5,000. These three revised forms would go into effect on January 1, 2006, only if the legislation that increases the

jurisdictional limit in small claims cases to \$7,500 for natural persons is enacted.¹

The text of revised forms is attached at pages 4-12.

Rationale for Recommendation

Two companion bills, AB 1459 (Canciamilla) and SB 422 (Simitian), add Code of Civil Procedure section 116.221 to the Small Claims Act, effective January 1, 2006. Both contain an identical new provision that states:

In addition to the jurisdiction conferred by Section 116.220, the small claims court has jurisdiction in an action brought by a natural person, if the amount of the demand does not exceed seven thousand five hundred dollars (\$7,500), except for actions otherwise prohibited by subdivision (c) of Section 116.220 or subdivision (a) of Section 116.231.

Section 116.220 confers jurisdiction on the small claims court for a demand to recover money not to exceed \$5,000. The new section increases jurisdiction in small claims court from \$5,000 to \$7,500 for actions brought by *natural persons* only.

Section 116.220(c) limits the demand of specified guarantors to \$4,000, and Section 116.231 limits a person to no more than two small claims filings exceeding \$2,500 in any calendar year. The increased jurisdictional limit does not change these two provisions.

The increased jurisdictional limit should be reflected on the small claims forms to coincide with the effective date of the new legislation, January 1, 2006. Because attorney representation is not allowed in small claims court, the forms are usually completed and filed by laypersons who represent themselves. Complete and accurate information should be provided, including the maximum amount that can be demanded in small claims court by a natural person.

¹ The proposed revisions to forms SC-100 and SC-101, stating the new jurisdictional limit of \$7500, further revise the same forms that would be revised in the separate and accompanying report, titled "Small Claims Plain-Language Forms (revise forms SC-100, SC-100A, SC-101, SC-103, SC-104, SC-104A, SC-120; adopt forms SC-104B, SC-104C, and SC-120A)." If the legislation is enacted that raises the small claims jurisdictional limit for a natural person to \$7,500, then versions of forms SC-100 and SC-110 in this report would supersede the forms in the report and recommendations titled, "Small Claims Plain-Language Forms."

Alternative Actions Considered

No alternatives were considered because the forms could mislead and confuse self represented parties if they are not revised to conform to current law as to jurisdictional limits.

Comments From Interested Parties

The conforming amendments were not circulated for statewide comment because the revised forms should be effective coextensive with the new law on January 1, 2006. The proposed changes to the forms were, however, reviewed and approved by the Civil and Small Claims Advisory Committee. The public will be given an opportunity to review and comment on these latest revisions in the winter 2006 public comment cycle.

Implementation Requirements and Costs

The new legislation will likely require some retooling of the courts' existing case management systems. The amended forms should have minimal cost impacts.

Attachments

Clerk stamps date here when form is filed.

Notice to the person being sued:

- You are the Defendant if your name is listed in ② on page 2 of this form. The person suing you is the Plaintiff, listed in ① on page 2.
- You and the Plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Fill in court name and street address:

Superior Court of California, County of

Clerk fills in case number and case name:

Case Number:**Case Name:****Order to Go to Court****The people in ① and ② must go to court:** (Clerk fills out section below.)

Trial Date	Date	Time	Department	Name and address of court if different from above
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

Date: _____ Clerk, by _____, Deputy

Instructions for the person suing:

- You are the Plaintiff. The person you are suing is the Defendant.
- *Before* you fill out this form, read Form SC-150, *Information for the Plaintiff (Small Claims)*, to know your rights. Get SC-150 at any courthouse or county law library, or go to: www.courtinfo.ca.gov/forms
- Fill out pages 2 and 3 of this form. Then make copies of **all** pages of this form. (Make 1 copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each Defendant a court-stamped copy of all 5 pages of this form and any pages this form tells you to attach. There are special rules for “serving,” or delivering, this form to public entities, associations, and some businesses. See Forms SC-104, SC-104B, and SC-104C.
- **Go to court on your trial date listed above.** Bring witnesses, receipts, and any evidence you need to prove your case.



Case Number:

Plaintiff (list names): _____

1 The Plaintiff (the person, business, or public entity that is suing) is:

Name: _____ Phone: (____) _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

If more than one Plaintiff, list next Plaintiff here:

Name: _____ Phone: (____) _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Check here if more than 2 Plaintiffs and attach Form SC-100A.

Check here if either Plaintiff listed above is doing business under a fictitious name. If so, attach Form SC-103.

2 The Defendant (the person, business, or public entity being sued) is:

Name: _____ Phone: (____) _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

If more than one Defendant, list next Defendant here:

Name: _____ Phone: (____) _____

Street address: _____
Street City State Zip

Mailing address (if different): _____
Street City State Zip

Check here if more than 2 Defendants and attach Form SC-100A.

Check here if any Defendant is on active military duty, and write his or her name here: _____

3 The Plaintiff claims the Defendant owes \$ _____ . (Explain below):

a. Why does the Defendant owe the Plaintiff money? _____

b. When did this happen? (Date): _____

If no specific date, give the time period: Date started: _____ Through: _____

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.) _____

Check here if you need more space. Attach one sheet of paper or Form MC-031 and write "SC-100, Item 3" at the top.



Plaintiff (list names): _____

4 You must ask the Defendant (in person, in writing, or by phone) to pay you before you sue. Have you done this? Yes No

If no, explain why not: _____

5 Why are you filing your claim at this courthouse?

This courthouse covers the area (check the one that applies):

- a. (1) Where the Defendant lives or does business. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the Defendant *or* where the Defendant lived or did business when the Defendant made the contract.
- (2) Where the Plaintiff's property was damaged.
- (3) Where the Plaintiff was injured.
- b. Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim is about an offer or contract for personal, family, or household goods, services, or loans. (*Code Civ. Proc., § 395(b).*)
- c. Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (*Civil Code, § 1812.10.*)
- d. Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (*Civil Code, § 2984.4.*)
- e. Other (specify): _____

6 List the zip code of the place checked in 5 above (if you know): _____

7 Is your claim about an attorney-client fee dispute? Yes No

If yes, and if you have had arbitration, fill out Form SC-101, attach it to this form, and check here:

8 Are you suing a public entity? Yes No

If yes, you must file a written claim with the entity first. A claim was filed on (date): _____

If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

9 Have you filed more than 12 other small claims within the last 12 months in California?

Yes No If yes, the filing fee for this case will be higher.

10 I understand that by filing a claim in small claims court:

- I have no right to appeal this claim and
- I cannot file, and have not filed, more than two small claims cases for more than \$2,500 in California during this calendar year.

I declare, under penalty of perjury under California State law, that the information above is true and correct.

Date: _____ ▶
Plaintiff types or prints name here *Plaintiff signs here*

Date: _____ ▶
Second Plaintiff types or prints name here *Second Plaintiff signs here*



Requests for Accommodations

Assistive listening systems, computer-assisted, real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the trial. Contact the clerk's office for Form MC-410, *Request for Accommodations by Persons With Disabilities and Order.* (*Civil Code, § 54.8.*)



“**Small claims court**” is a special court where claims for \$5,000 or less are decided. A “natural person” (not a business or public entity) may claim up to \$7,500. The process is quick and cheap. The rules are simple and informal.

You are the Defendant—the person being sued. The person who is suing you is the Plaintiff.

Do I need a lawyer?

You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court?

You don’t have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and any evidence that supports your case. And read “Get Ready for Court” at: www.courtinfo.ca.gov/selfhelp/smallclaims/getready.htm

What if I need an accommodation?

If you have a disability or are hearing impaired, fill out Form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/Access Coordinator.

What if I don’t speak English well?

Ask the clerk if the court can give you an interpreter for free. If not, bring someone—like an adult relative or friend—who can interpret for you in court. It is best if your interpreter is not a witness or listed in this case. Or ask the clerk for a list of interpreters. (Interpreters usually charge a fee.)

Where can I get the court forms I need?

Go to any courthouse or your county law library, or print forms at: www.courtinfo.ca.gov/forms

What happens at the trial?

The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case?

If you lose, you can appeal. You’ll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file Form SC-140, *Notice of Appeal*. You must file within 30 days after the judge’s decision.
- If you were *not* at the trial, fill out and file Form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File Form SC-140.

For more information on appeals, see:

www.courtinfo.ca.gov/selfhelp/smallclaims/appeal.htm

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the Plaintiff agree on how to settle the case, both of you must notify the court. Ask the Small Claims Advisor for help.
- **Prove this is the wrong court.** Send a letter to the court *before* your trial, explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done this.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To make sure the witnesses go to the trial, fill out Form SC-107, and the clerk will subpoena (order) them to go.
- **Sue the person who is suing you.** File Form SC-120, *Defendant’s Claim*. There are strict filing deadlines you must follow.
- **Agree with the Plaintiff’s claim and pay the money.** Or, if you can’t pay the money now, go to your trial and say you want to make payments.
- **Let the case “default.”** If you don’t settle and do not go to the trial (default), the judge may give the Plaintiff what he or she is asking for plus court costs. If this happens, the Plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial) *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county) *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out Form SC-110 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.



Need help?

Your county’s Small Claims Advisor can help for free.

Or go to “County-Specific Court Information” at:
www.courtinfo.ca.gov/selfhelp/smallclaims

La “**Corte de reclamos menores**” es una corte especial donde se deciden casos por \$5,000 ó menos. Una "persona natural" (que no sea un negocio ni una entidad pública) puede reclamar hasta \$7,500. El proceso es rápido y barato. Las reglas son sencillas e informales.

Usted es el Demandado — la persona que se está demandando. La persona que lo está demandando es el Demandante.

¿Necesito un abogado?

Puede hablar con un abogado antes o después del caso. Pero *no puede* tener a un abogado que lo represente ante la corte (a menos que se trate de una apelación de un caso de reclamos menores).

¿Cómo me preparo para ir a la corte?

No tiene que presentar ningunos papeles antes del juicio, a menos que piense que ésta es la corte equivocada para su caso. Pero lleve al juicio cualquier testigos, recibos, y cualquier pruebas que apoyan su caso. Y lea “Prepárese para la corte” en:

www.courtinfo.ca.gov/selfhelp/espanol/reclamosmenores/preparearse.htm

¿Qué hago si necesito una adaptación?

Si tiene una discapacidad o tiene impedimentos de audición, llene el formulario MC-410, *Request for Accomodations*. Entregue el formulario al secretario de la corte o al Coordinador de Acceso/ADA de su corte.

¿Qué pasa si no hablo bien inglés?

Pregúntele al secretario si la corte le puede dar un intérprete sin costo. Si no, lleve consigo a alguien— ya sea un pariente adulto o amigo— que pueda servirle de intérprete en la corte. O pide del secretario una lista de intérpretes. Es mejor que su intérprete no sea un testigo ni una persona que figure en este caso. (Los intérpretes en general cobran un honorario.)

¿Dónde puedo obtener los formularios de la corte que necesito?

Vaya a cualquier edificio de la corte, la biblioteca legal de su condado o imprima los formularios en:
www.courtinfo.ca.gov/forms

¿Qué pasa en el juicio?

El juez escuchará a ambas partes. El juez puede tomar su decisión durante la audiencia o enviársela por correo después.

¿Qué pasa si pierdo el caso?

Si pierde, puede apelar. Tendrá que pagar una cuota. (El Demandante no puede apelar su propio reclamo.)

- Si estuvo presente en el juicio, llene el formulario SC-140, *Aviso de apelación*. Tiene que presentarlo dentro de 30 días después de la decisión del juez.
- Si *no* estuvo en el juicio, llene y presente el formulario SC-135, *Aviso de petición para anular el fallo y Declaración para pedirle al juez que anule el fallo (decisión)*. Si la corte no le otorga un nuevo juicio, tiene 10 días para apelar la decisión. Presente el formulario SC-140.

Para obtener más información sobre las apelaciones, vea:
www.courtinfo.ca.gov/selfhelp/espanol/reclamosmenores/apelar.htm

¿Tengo otras opciones?

Sí. Si lo están demandando, puede:

- **Resolver su caso antes del juicio.** Si usted y el Demandante se ponen de acuerdo en resolver el caso, ambos tienen que notificar a la corte. Pídale al Asesor de Reclamos Menores que lo ayude.
- **Probar que es la corte equivocada.** Envíe una carta a la corte *antes* del juicio explicando por qué cree que es la corte equivocada. Pídale a la corte que despida el reclamo. Tiene que entregar (dar) una copia de su carta (por correo o en persona) a todas las partes. (Su carta a la corte tiene que decir que hizo la entrega.)
- **Ir al juicio y tratar de ganar el caso.** Lleve testigos, recibos y cualquier prueba que necesite para probar su caso. Para asegurarse que los testigos vayan al juicio, llene el formulario SC-107, y el secretario emitirá una orden de comparecencia ordenándoles que se presenten.
- **Demandar a la persona que lo demandó.** Presente el formulario SC-120, *Reclamo del demandado*. Hay fechas límite estrictas que debe seguir.
- **Aceptar el reclamo del Demandante y pagar el dinero.** O, si no puede pagar en ese momento, vaya al juicio y diga que quiere hacer los pagos.
- **No ir al juicio y aceptar el fallo por falta de comparecencia.** Si no llega a un acuerdo con el Demandante y no va al juicio (fallo por falta de comparecencia), el juez le puede otorgar al Demandante lo que está reclamando más los costos de la corte. En ese caso, el Demandante legalmente puede tomar su dinero, su sueldo o sus bienes para cobrar el fallo.

¿Qué hago si necesito más tiempo?

Puede cambiar la fecha del juicio si:

- No puede ir a la corte en la fecha programada (tendrá que pagar una cuota para aplazar el juicio) o
- No le entregaron los documentos legalmente (no recibió la orden para ir a la corte) por lo menos 15 días antes del juicio (ó 20 días si vive fuera del condado) o
- Necesita más tiempo para conseguir intérprete. (Se permite un solo aplazamiento sin tener que pagar cuota para aplazar el juicio).

Pregúntele al secretario de reclamos menores sobre las reglas y las cuotas para aplazar un juicio. O llene el formulario SC-110 (o escriba una carta) y envíelo antes del plazo a la corte y a todas las otras personas que figuran en sus papeles de la corte. Adjunte un cheque para pagar los costos de la corte, a menos que le hayan dado una exención.



¿Necesita ayuda? El Asesor de Reclamos Menores de su condado le puede ayudar sin cargo.

O vea “Información por condado” en:
www.courtinfo.ca.gov/selfhelp/espanol/reclamosmenores

This form is attached to Form SC-100, item 7. It tells the court that you are suing about a disagreement for \$5,000 (\$7,500 if you are a natural person) or less in attorney fees and that you have tried to solve the disagreement through arbitration. Read page 2 of this form before you fill out this form. It explains your rights and some small claims terms.

1 How much money is in dispute? \$ _____ 2 You are (check one): [] Attorney [] Client

3 What did the arbitrator decide? (Check one):
a. [] The [] attorney [] client has to pay the other party this amount: \$ _____
b. [] Neither party has to pay the other party anything.

4 Write the date your Notice of Award was mailed here: _____ (Look at the bottom of the Notice.)

5 Why are you filing in small claims court now? (Check what you are asking the judge to do):
a. [] I want the court to confirm the award.
b. [] I want the court to correct the award because (check only one and explain below):
1. [] It contains an error in calculation or a mistake in describing someone or something in the award.
2. [] The arbitrator considered legal issues not allowed in this kind of hearing and the award can be corrected so it is fair.
3. [] It doesn't follow the rules for proper wording, information, or signature. (State Bar Rule 37.2 et seq.)

Explain: _____

c. [] I want the court to vacate (cancel) the award because (check only one and explain below):
1. [] It was obtained by fraud, corruption, or other unfair means.
2. [] The arbitrator was corrupt.
3. [] The arbitrator did something wrong that substantially hurt my case.
4. [] The arbitrator considered legal issues not allowed in this kind of hearing and the award cannot be corrected so it is fair.
5. [] The arbitrator unfairly refused to postpone my case or refused to consider important evidence that could help settle the dispute or conducted the hearing in another way that is not allowed.
6. [] The arbitrator knew of reasons why he or she could have been disqualified but did not disclose this information or did not disqualify himself or herself after I asked the arbitrator to do so at the proper time.

Explain: _____

[] Check here if you are asking for a new arbitration hearing.
d. [] I want a trial in small claims court to decide the fee dispute. (You can check this option only if you did not agree in writing to a binding award and you file this form within 30 days after the Notice of the Award.)

6 Did you (or your attorney) go to the arbitration hearing? [] Yes [] No (If no, explain below): _____

7 Attach a copy of the Arbitration Agreement and the Notice of Award (the arbitrator's decision). If you do not attach them, explain why here: _____

Date: _____ Type or print your name Sign your

Your name: _____

What is arbitration?

Arbitration is when a neutral person (an arbitrator) hears evidence from each side and then makes a decision (award) in your case. It is less formal than a trial in court.

Do I *have* to use arbitration for this dispute?

In most cases, yes. The only exceptions are:

- Parties who did not sign an agreement to arbitrate fee disputes *and*
- Clients who do not want to use arbitration. The attorney *must* use arbitration if the client asks for it.

What is *nonbinding* arbitration?

Nonbinding arbitration allows you *or* the other side to ask for a trial if either of you does not like the arbitrator's decision. You have 30 days after the notice is mailed to ask for a trial.

What is *binding* arbitration?

Binding arbitration means you and the other side gave up your right to a trial and must accept the arbitrator's decision. Your arbitration is binding if:

- Both sides agreed to binding arbitration in writing (after they disagreed about fees or costs) *or*
- 30 days or more have gone by since the nonbinding decision was mailed.

What if I agree with the award?

If your award is *nonbinding* and the other party does not file papers asking for a trial, the award becomes binding in 30 days.

If the award is *binding* and it says the other party owes you money, send a letter asking to be paid within a reasonable time. If you don't get paid, ask the court to "confirm" the award. This allows you to ask the court to order payment from the other party's paycheck, bank accounts or property. You must do this within 4 years after the notice of award. (See page 1, item 5a.)

What if I am not happy with the award?

You can ask the court to **correct** the award if it contains an obvious mistake in calculating a number or describing a person, thing, or property. (See page 1, item 5b.)

You can ask the court to **vacate (cancel)** the award if certain kinds of misconduct or mistakes happened in the arbitration. (See page 1, item 5c.)

You can reject the award and **ask for a trial** if you and the other party did not agree in writing to binding arbitration. (See page 1, item 5d.)

How long do I have to ask for a trial?

You have up to 30 days after the date the Notice of Award was mailed to you. Look for the date on the bottom of the notice. If you do not ask for a trial within 30 days, the award will become binding.

How long do I have to ask the court to vacate or correct the award?

In most cases you have up to 100 days after the date the Notice of Award was mailed to you. But if the other side asks the court to confirm, correct, or vacate the award, you must ask the court to correct or vacate the award before the court's deadline to answer the other side's request. Your Small Claims Advisor can give you more information on court deadlines.

Which court do I use for a trial or to confirm, correct, or vacate the award?

If a lawsuit has already been filed about the fee disagreement, file your papers in the same court and use same case number as in that lawsuit. (Before filing, you must serve all parties named in the claim.)

If no lawsuit has been filed about the fee disagreement, file in the court of the county where the arbitration was held and ask for a trial or ask the court to confirm, correct, or vacate the award.

- If the amount in disagreement is \$5,000 or less, file in small claims court. Use Forms SC-100 and SC-101.
- If the amount in disagreement is more than \$5,000 (\$7,500 for a natural person*), file in superior court. See Form ADR-105.

What if an attorney doesn't pay the award?

If an attorney doesn't pay the award, the State Bar can help you. If you don't receive the award in 100 days after receiving the Notice of the Award, or if the award becomes a final judgment, contact the State Bar at:

Mandatory Fee Arbitration
180 Howard Street, 6th Floor
San Francisco, CA 94105-1639
415-538-2020

More Information

California has special laws for arbitration of disputes over attorney fees. For more information, see:

- State Bar of California Web site: www.calbar.org
- Form ADR-105, *Information Regarding Rights After Attorney-Client Fee Arbitration*
- Cal. Business & Professions Code, §§ 6200–6206

* A "natural person" is not a business or public entity.

INFORMATION FOR THE SMALL CLAIMS PLAINTIFF

This information sheet is written for the person who sues in the small claims court. It explains some of the rules of and some general information about the small claims court. It may also be helpful for the person who is sued.

WHAT IS SMALL CLAIMS COURT?

Small claims court is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. The person who sues is the **plaintiff**. The person who is sued is the **defendant**. In small claims court, you may ask a lawyer for advice before you go to court, but you cannot have a lawyer in court. Your claim cannot be for more than \$5,000 or \$7,500 if you are a natural person (not a business or public entity)(*see below). If you have a claim for more than this amount, you may sue in the civil division of the trial court or you may sue in the small claims court and give up your right to the amount over \$5,000 or \$7,500 if you are a natural person. You cannot, however, file more than two cases in small claims court for more than \$2,500 each during a calendar year.

WHO CAN FILE A CLAIM?

1. You must be at least *18 years old* to file a claim. If you are not yet 18, tell the clerk. You may ask the court to appoint a **guardian ad litem**. This is a person who will act for you in the case. The guardian ad litem is usually a parent, a relative, or an adult friend.
 2. A person who sues in small claims court must first make a **demand** if possible. This means that you have asked the defendant to pay, and the defendant has refused. If your claim is for possession of property, you must ask the defendant to give you the property.
 3. Unless you fall within two technical exceptions, you must be the **original owner** of the claim. This means that if the claim is assigned, the buyer cannot sue in the small claims court.
- You must also appear at the small claims hearing yourself unless you filed the claim for a corporation or other entity that is not a natural person.**
4. If a corporation files a claim, an employee, officer, or director must act on its behalf. If the claim is filed on behalf of an association or other entity that is not a natural person, a regularly employed person of the entity must act on its behalf. A person who appears on behalf of a corporation or other entity must not be employed or associated solely for the purpose of representing the corporation or other entity in the small claims court. **You must file a declaration with the court to appear in any of these instances.** (See *Authorization to Appear on Behalf of Party, form SC-109.*)

WHERE CAN YOU FILE YOUR CLAIM?

You must sue in the right court and location. This rule is called **venue**. Check the court's local rules if there is more than one court location in the county handling small claims cases.

If you file your claim in the wrong court, the court will dismiss the claim unless all defendants personally appear at the hearing and agree that the claim may be heard.

The right location may be any of these:

1. Where the defendant lives or where the business involved is located;
2. Where the damage or accident happened;
3. Where the contract was signed or carried out;
4. If the defendant is a corporation, where the contract was broken;
5. For a retail installment account or sales contract or a motor vehicle finance sale:
 - a. Where the buyer lives;
 - b. Where the buyer lived when the contract was entered into;
 - c. Where the buyer signed the contract; or
 - d. Where the goods or vehicle are permanently kept.

SOME RULES ABOUT THE DEFENDANT (including government agencies)

1. You must sue using the defendant's *exact legal name*. If the defendant is a business or a corporation and you do not know the exact legal name, check with: the state or local licensing agency; the county clerk's office; or the Office of the Secretary of State, corporate status unit. Ask the clerk for help if you do not know how to find this information. If you do not use the defendant's exact legal name, the court may be able to correct the name on your claim at the hearing or after the judgment.
2. If you want to sue a government agency, you must first file a claim with the agency before you can file a lawsuit in court. Strict time limits apply. If you are in a Department of Corrections or Youth Authority facility, you must prove that the agency denied your claim. Please attach a copy of the denial to your claim.

HOW DOES THE DEFENDANT FIND OUT ABOUT THE CLAIM?

You must make sure the defendant finds out about your lawsuit. This has to be done according to the rules or your case may be dismissed or delayed. The correct way of telling the defendant about the lawsuit is called **service of process**. This means giving the defendant a copy of the claim. **YOU CANNOT DO THIS YOURSELF**. Here are four ways to serve the defendant:

1. **Service by a law officer** — You may ask the marshal or sheriff to serve the defendant. A fee will be charged.
2. **Process server** — You may ask anyone who is *not a party* in your case and who is at least *18 years old* to serve the defendant. The person is called a **process server** and must personally give a copy of your claim to the defendant. The person must also sign a proof of service form showing when the defendant was served. Registered process servers will do this for you for a fee. You may also ask a friend or relative to do it.
3. **Certified mail** — You may ask the clerk of the court to serve the defendant by certified mail. The clerk will charge a fee. You should check back with the court prior to the hearing to see if the receipt for certified mail was returned to the court. **Service by certified mail must be done by the clerk's office except in motor vehicle accident cases involving out-of-state defendants.**
4. **Substituted service** — This method lets you serve another person instead of the defendant. You must follow the procedures carefully. You may also wish to use the marshal or sheriff or a registered process server.

* The \$5,000 or \$7,500 limit does not apply, and a \$4,000 limit applies, if a "defendant guarantor . . . is required to respond based upon the default, actions, or omissions of another" (\$2,500 if the defendant guarantor does not charge a fee for the service).

(Continued on reverse)

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4. **Substituted service** (*continued*)

A copy of your claim must be left

— at the defendant's business with the person in charge;

OR

— at the defendant's home with a competent person who is at least 18 years old. The person who receives the claim must be told about its contents. Another copy must be mailed, first class, postage prepaid, to the defendant at the address where the paper was left. The service is not complete until *10 days* after the copy is mailed.

No matter which method of service you choose, the defendant must be served by a certain date or the trial will be postponed. If the defendant lives in the county, service must be completed at least *15 days* before the trial date. This period is at least *20 days* if the defendant lives outside the county.

The person who serves the defendant must sign a court paper showing when the defendant was served. This paper is called a *Proof of Service* (form SC-104). It must be signed and returned to the court clerk as soon as the defendant has been served.

WHAT IF THE DEFENDANT ALSO HAS A CLAIM?

Sometimes the person who was sued (the **defendant**) will also have a claim against the person who filed the lawsuit (the **plaintiff**). This claim is called the *Defendant's Claim*. The defendant may file this claim in the same lawsuit. This helps to resolve all of the disagreements between the parties at the same time.

If the defendant decides to file the claim in the small claims court, the claim may not be for more than \$5,000 or \$7,500 if the defendant is a natural person (*see reverse). If the value of the claim is more than this amount, the defendant may either give up the amount over \$5,000 or \$7,500 and sue in the small claims court or file a motion to transfer the case to the appropriate court for the full value of the claim.

The defendant's claim must be served on the plaintiff at least *5 days* before the trial. If the defendant received the plaintiff's claim *10 days* or less before the trial, then the claim must be served at least *1 day* before the trial. Both claims will be heard by the court at the same time.

WHAT HAPPENS AT THE TRIAL?

Be sure you are on time for the trial. The small claims trial is informal. You must bring with you all witnesses, books, receipts, and other papers or things to prove your case. You may ask the witnesses to come to court voluntarily. You may also ask the clerk of the court to issue a **subpoena**. A subpoena is a court order that *requires* the witness to go to trial. The witness has a right to charge a fee for going to the trial. If you do not have the records or papers to prove your case, you may also get a court order prior to the trial date requiring the papers to be brought to the trial. This order is called a *Small Claims Subpoena and Declaration* (form SC-107).

If you settle the case before the trial, you must file a **dismissal** form with the clerk.

The court's decision is usually mailed to you after the trial. It may also be hand delivered to you when the trial is over and after the judge has made a decision. The decision appears on a form called the *Notice of Entry of Judgment* (form SC-130).

WHAT HAPPENS AFTER JUDGMENT?

The court may have ordered one party to pay money to the other party. The party who wins the case and collects the money is called the **judgment creditor**. The party who loses the case and owes the money is called the **judgment debtor**. Enforcement of the judgment is **postponed** until the time for appeal ends or until the appeal is decided. This means that the judgment creditor cannot collect any money or take any action until this period is over. Generally both parties may be represented by lawyers after judgment. More information about your rights after judgment is available on the back of the *Notice of Entry of Judgment* form. The clerk may also have this information on a separate sheet.

HOW TO GET HELP WITH YOUR CASE

1. **Lawyers** — Both parties may ask a lawyer about the case, but a lawyer may not represent either party in court at the small claims trial. Generally, after judgment and on appeal, both parties may be represented by a lawyer.
2. **Interpreters** — If you do not speak English, you may take a family member or friend to court with you. The court should keep a list of interpreters who will interpret for you. Some interpreters charge a reasonable or no fee. If an interpreter is not available, the court must postpone the hearing one time only so that you have time to get one.
3. **Waiver of fees** — The court charges fees for some of its procedures. Fees are also charged for serving the defendant with the claim. The court may excuse you from paying these fees if you cannot afford them. Ask the clerk for the *Information Sheet on Waiver of Court Fees and Costs* (form 982(a)(17)(A)) to find out if you meet the requirements so that you do not have to pay the fees.
4. **Night and Saturday court** — If you cannot go to court during working hours, ask the clerk if the court has trials at **night** or on **Saturdays**.
5. **Parties who are in jail** — If you are in jail, the court may excuse you from going to the trial. Instead, you may ask another person who is not an attorney to go to the trial for you. You may mail written declarations to the court to support your case.
6. **Accommodations** — If you have a disability and need assistance, please ask the court immediately to help accommodate your needs. If you are hearing impaired and need assistance, please notify the court immediately.
7. **Forms** — You can get small claims forms and more information at the California Courts Self-Help Center Web site (www.courtinfo.ca.gov), your county law library, or at the courthouse nearest you.
8. **Small claims advisors** — The law requires each county to provide assistance in small claims cases free of charge. (*Small claims advisor information*):