

# **GUIDE TO SMALL CLAIMS PROCEDURES: GLOSSARY OF TERMS**

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Greenberg Glusker

Reed Smith

Bet Tzedek Legal Services

Los Angeles County Bar Association

Loyola Center for Conflict Resolution

Southwestern Law School

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**Disclaimer: This handout is for informational purposes only. It does not constitute legal advice and it does not create an attorney-client relationship.**

1. **Agent for Service of Process:** A person or entity that a corporation or other entity designates as its agent to receive documents constituting "service of process." Serving these documents on the agent is effective as service on the person or entity that designated the agent.
2. **Appeal:** Petition by the unsuccessful party in a lawsuit to a higher court to review a final decision on the grounds that it was based upon a legal error or other error.
3. **Claim of Defendant:** A claim filed by a defendant against the plaintiff who has started the lawsuit.
4. **Claimant:** A person (including both a plaintiff and a defendant) who asserts a claim.
5. **Complaint:** A document that starts a civil lawsuit by setting forth for the court a claim for relief from injury caused by the defendant.
6. **Damages:** Money that is sought by a claimant in court equal to the dollar value of claimant's losses, due to injury caused by the wrongful conduct of another party.
7. **Defendant:** The person or other entity that is being sued.
8. **Defense:** Facts and argument that defeat a claim by explaining why the plaintiff is not lawfully entitled to the relief he seeks, even if the facts supporting the plaintiff's claim are true. These defenses can be based on various legal principles.
9. **Default:** If a party to an action does not attend the hearing it is sometimes said that the party is in "default." If the judge determines that the non-appearing party was properly notified of the action, the judge may consider the plaintiff's evidence and decide the case in the defendant's absence. However, in Small Claims court the plaintiff may still prove her case. It is not automatic just because the defendant doesn't show up.
10. **Default Judgment:** A decision entered when one party doesn't attend the Small Claims court hearing. But the claimant still must prove her claim in order to get a judgment in her favor.
11. **Demand:** A claim for money or other relief or the assertion of a legal right.
12. **Dismiss with Prejudice:** To set aside the present action without the claimant having a right to file another lawsuit on that same claim. A dismissal with prejudice ends the case.
13. **Dismiss Without Prejudice:** To set aside the present action, but leave open the possibility of another lawsuit on the same claim. The plaintiff can file a new lawsuit on the same claim but has to start from scratch.
14. **Fee Waiver:** Permission from the court to file a claim or other documents without paying the required filing fees, based on a showing of need.

15. **Fictitious Business Name:** A business using a fictitious business name means that the name of the business or operation does not include the legal name of its proprietor, the names of all partners, or the official registered name of the entity that owns it. Sometime these names are referred to as a “DBA” which stands for “Doing Business As.”
16. **Garnish/ Garnishment:** To "garnish" a debtor's wages means to collect them in order to satisfy an unpaid judgment.
17. **Good cause:** A sufficient reason to justify the requested action, as determined by the judge.
18. **Judgment:** The decision of the judge. It resolves a controversy and determines the rights and obligations of the parties. It usually states that the judgment debtor must pay the judgment creditor some amount of money and may contain other terms. The case is over when the court enters judgment.
19. **Judgment Creditor:** The party in whose favor a judgment has been entered.
20. **Judgment Debtor:** The party against whom judgment has been entered.
21. **Levy:** The seizure of property to satisfy a judgment.
22. **Liability:** Legal responsibility for one’s acts or omissions. Someone who is "liable" is found to be at fault.
23. **Lien:** an official claim or charge against a debtor's property or funds for payment of a debt.. A lien carries with it the right to sell property, if necessary, to obtain the money.
24. **Mediation:** A method for attempting to settle a dispute by having an independent person (the mediator) try to help the parties reach a mutually acceptable solution to their disagreement. Mediation is not binding -- in other words, a mediator cannot order any party to do anything.
25. **Motion:** A written request to the Court.
26. **Natural Person:** An individual person, as opposed to a business entity.
27. **Personal Service:** The actual delivery, in person, of documents to the individual to whom they are directed. Service by mail or overnight delivery is not personal service.
28. **Party:** A person named as a plaintiff or defendant in a court action (may be a natural person or a business entity).
29. **Physical Evidence:** Any evidence introduced in court in the form of a physical object, intended to prove a disputed fact based on its physical characteristics.
30. **Plaintiff:** The party who starts a lawsuit by filing a complaint or a claim against the defendant demanding damages or other relief.

31. **Process Server:** A person who serves (delivers) court papers on a party to a lawsuit. This may be an adult relative or friend, a professional process server, or a County Sheriff.

32. **Reformation:** The correction or change of an existing document by court order upon petition of one of the parties to the document. Reformation will be ordered if there is proof that the parties did not intend the language as written or there was an omission due to mistake or misunderstanding.

33. **Rescission:** The cancellation of a contract and the return of the parties to the positions they would have had if the contract had not been made.

34. **Restitution:** The return of something to the owner of it, or to the person entitled to it.

35. **Service (of Process):** Delivery of a writ, summons, or other legal papers to the person required to respond to them. In Small Claims court, this means delivery of *Plaintiff's Claim and Order to Go to Small Claims Court (SC-100)*.

36. **Settlement:** An agreement reached by the parties to a dispute, often involving the compromise of one or more claims, that resolves the dispute. It typically states the terms (including total amount and payment dates) to which the parties have agreed.

37. **Specific Performance:** The right of a party to a contract to demand that the defendant (the party who it is claimed breached the contract) be ordered in the judgment to perform the contract. In small claims court, specific performance may be ordered in addition to a judgment for money if the contract can still be performed, and money cannot sufficiently reward the plaintiff. This only applies where the contract is for something "unique" -- e.g. a one-of-a-kind wedding dress or piece of jewelry.

38. **Statute of Limitations:** The maximum period of time which one can wait before filing a lawsuit or a claim in order to avoid loss of the claim. The length of the period depends on the type of claim.

39. **Stipulate:** To agree to something; to give one's consent.

40. **Submission:** A judge is said to take the case under submission when he or she does not immediately announce a decision. The decision will be sent to the parties later by mail.

41. **Subpoena:** A court order that requires a named person to come to court to testify as a witness. A party to a Small Claims action may request the Small Claims clerk to issue a subpoena.

42. **Substituted Personal Service ("Substituted Service"):** Accomplishing service (delivery) of legal documents by leaving the documents with an adult resident of the home of the person to be served, with an employee with management duties at the office of an individual or with such an employee at corporate headquarters.

43. **Temporary Judge:** An attorney who volunteers his or her time to hear and decide Small Claims court cases. Also called a "pro tem" judge.

44. **Testify:** To tell something to the judge in court. A person who testifies is a witness.

45. **Vacate:** A judge issues an order to set aside a judgment which he/she finds improper.

46. **Witness:** A person who testifies under oath in a trial or at a hearing with first-hand evidence useful in a lawsuit. A party to the lawsuit (plaintiff or defendant) may be a witness.