

# **GUIDE TO SMALL CLAIMS PROCEDURES: JUDGMENT AND APPEAL**

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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.**

## I. THE JUDGMENT

### A. Receiving the Judge's Decision

- Mailed by Court, generally within 10-12 days of hearing.
  - At the hearing, the Judge will tell you s/he is *taking the case under submission*
  - Sometimes (less often) the judge will rule that day ("rule from the bench"). If that happens, the judge will still mail the judgment to the parties.
- The judgment comes on a form called *Notice of Entry of Judgment* (form SC-130).
- Losing party that owes money should receive a *Judgment Debtor's Statement of Assets* (SC-133) that should be completed within 30 days to avoid fines or arrest!
- Parties can request to have their evidence returned (ask clerk and bring ID).
- Ask the judge to award your out-of-pocket costs, if any, if you are a prevailing defendant. Make sure to keep receipts of these costs and bring them with you to the hearing.
- Often plaintiffs will want to change the name of the defendant to add the defendant's husband, wife, or business. This cannot be done after the fact. The plaintiff would need to bring a new action. Because of this, it is especially important that the correct party is named in the first place. (See handout re Filing a Small Claims Action.)

### B. Remedy for Non-appearing Losing Plaintiff

- If you did not appear and you received a Judgment against you:
  - You must file a *Notice of Motion to Vacate Judgment* (form SC-135) within 30 days from date that Court mailed Notice of Entry of Judgment, and pay a \$20 filing fee. Filing of motion suspends enforcement of judgment.
  - Clerk will notify all parties by mail of new Court date, which is set within 16 days of filing motion.
  - Motion granted if there is "good cause." (e.g., you miscalendared the date, your child was sick, there was a death in the family, etc.)
    - If granted and all the parties are present and agree to proceed, underlying case may be heard immediately.
    - If granted, but either party is not present, clerk will reschedule the case.

- Dismissed "without prejudice":
  - The case is dismissed, but you are allowed to bring the same claims again.
  - You will have to re-file the case, pay fees (or file another fee waiver application), and start all over again.

### C. Remedy for Non-appearing Losing Defendant

- Service was proper: follow same procedure as plaintiff.
- Service was improper: up to 180 days to file a *Notice of Motion to Vacate Judgment* (form **SC-135**) after the date you learned of or should have learned of judgment.
  - Motion granted if Court determines i) service not proper (you must show why), and ii) request to vacate was timely filed.
    - If granted and all the parties are present and agree, underlying case may be heard immediately.
    - If denied, you have 10 days to appeal to Superior Court by filing *Notice of Appeal* (form **SC-140**) (\$75 filing fee). If Superior Court decides that motion should have been granted, it may hear the case, or transfer it to Small Claims Court.
  - ❖ **TIP:** Defendant may move to correct or set aside judgment but that does **not** extend the defendant's time to appeal!
  - ❖ **TIP:** If you don't show up at the hearing and judgment is entered against you, you cannot immediately file a *Notice of Appeal*. Instead, you have to file the *Notice of Motion to Vacate*. If you win that appeal, then the case goes back to Small Claims Court to be heard on its merits. If you lose that appeal, the judgment stands.

## II. SMALL CLAIMS APPEAL

- **Plaintiff or defendant**, If you lose on your own affirmative claim, you cannot appeal. But, if you lose on the other party's claim, you may appeal.
- **Defendant**, where you fail to appear at the hearing and your motion to vacate is denied, or where you appear at the hearing and get a judgment against you, you may obtain a review of the decision by filing a *Notice of Appeal* (form **SC-140**).
  - To appeal from a judgment where you were present at the hearing, file a *Notice of Appeal* (form **SC-140**) and pay the \$75 filing fee, within 30 days after the date that the clerk mails Notice of Entry of Judgment, and there will be new hearing on all claims.

- To appeal from the denial of a motion to vacate, file a *Notice of Appeal* (form **SC-140**) within 10 days after denial of the motion.
  - If new Judge decides that your motion should have been granted, Superior Court may hear the case or transfer it to Small Claims Court.
- Appeal hearing is before a Superior Court Judge, but otherwise just like small claims.
- Attorneys CAN represent parties.
- Judge fully retries ALL claims of original parties to the small claims action, and for the original amount. (Unless it is an appeal from the denial of a motion to vacate judgment.)
- Possible reimbursement of attorneys fees, expenses, and loss of earnings related to appeal.
- A party who appeals for purpose of delay or harassment can be penalized by having to pay additional money.
- Decision is final and not appealable.