

# **GUIDE TO SMALL CLAIMS PROCEDURES:**

## **PREPARING FOR COURT AND PRESENTING YOUR CASE**

### **(PLAINTIFFS OR DEFENDANTS)**

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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.**

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## I. THE SMALL CLAIMS HEARING

### A. Preparing before you go to Court.

- Where you are going and when to be there?
  - Make sure you know exactly where you need to go for the hearing; what address and which room. Get there early to avoid added anxiety by being late.
  - If you are the defendant, you must appear at the time and place designated in the Complaint. Even if you believe it is not the right courthouse, you should appear to avoid possible judgment against you.
- Gather your facts, documents, physical evidence and witnesses
  - Facts:
    - Be prepared to present all of the important facts to the Court in an organized and understandable manner. Consider presenting the facts in chronological order and preparing a chart or timeline.
    - Prepare notes of what you want to say.
      - ❖ **TIP:** If you are the **plaintiff**, make sure to focus on **liability** before **damages**. In other words, make your case for why the defendant is at fault before making your case for how much money you are owed.
      - ❖ Example: If you are suing based on a car accident, first present the facts and evidence showing that the accident was caused by defendant, then present the facts and evidence showing the costs to repair the car and receive treatment for any personal injury.
  - Documents:
    - Anything tangible that has information recorded on it, including bills, invoices, e-mails, print outs of information stored on a computer, recordings of a voicemail, photographs of the injuries, the car or the scene, letters, receipts, etc.
    - Gather the important documents and put them in order of importance or chronological order.
    - Make three copies of each to bring with you to Court; one for the Court, one for the other party and an extra for yourself.
    - Keep your original documents separately and bring them to Court in case the judge wants to see them.
    - Also bring receipts of any out-of-pocket costs (such as filing fees) that you have incurred. At the hearing, ask the judge to award your costs if you are the prevailing party.
  - Physical evidence:
    - Do not forget any physical evidence you may have: a torn dress, a broken part or anything else that might be important for the judge to see in deciding your case.

- Witnesses:
  - You must have any important witnesses in Court if at all possible. Ideally, they should be witnesses who want to come voluntarily.
  - If the witness will not agree to come voluntarily (e.g. you need a police officer to testify for you), you can serve the witness with a Court order to appear ("subpoena") (**SC-107**). You can also use this subpoena to get records from a public agency (e.g., the Bureau of Automotive Repair).
  - Unlike "service of process" (serving defendant with a complaint), a party can serve the subpoena herself. She does not have to get a 3<sup>rd</sup> party to serve it.
  - A witness may request a witness fee to appear (\$35 plus \$0.20 per mile each way from their home or work place to the Court house). If not paid, the witness does not have to appear.
  - If not possible to get a witness to Court, obtain a sworn statement ("declaration") from each unavailable witness to bring to Court (form **MC-030** that can be found on the Court website).
  
- Interpreters: If you do not speak and understand English fluently, you may bring a person with you to interpret for you. The Court will have a list available of interpreters who will assist you for free or for a minimal charge, or you can bring someone you know to help you.

## B. The Day of the Hearing.

- When you arrive, check in with the clerk of the court, advise them of your name and case number. If you have documents for the Court, ask if the clerk would like them now.
  
- Who will hear the case?
  - Judge or Commissioner
  - Judge Pro-Tem: attorney with at least 10 years experience and special training
  
- How to present your case
  - Be calm and logical in your presentation of the facts, documents, and physical evidence. Do not get emotional or excited.
  - If the Judge starts talking, immediately stop talking and listen to any question the judge asks. Answer the question directly, yes or no, if possible, then add any short explanation you think necessary.
  - Talk only to the Judge, not the opposing party.
  - The hearing for each matter lasts approximately 5 minutes. Each party has about 2 minutes to present his or her case and then the judge will likely ask questions.

C. **The Decision**

- The judge may make his/her decision in Court at the hearing and tell you the decision orally. This is also called "ruling from the bench."
- Alternately the judge may decide to look at the evidence further and make the ruling at a later date. When the judge does not rule at the hearing, it is said that the judge "takes the case under submission." In that case you will receive a written decision in the mail.
- If the judge rules in your favor at the hearing, you should ask the Court to award you the costs you may have incurred in the action.
  - You may recover filing fees, process server fees and witness fees
  - You may not recover attorney fees or fees for an investigator or skip tracer