Small Claims Handbook

A Guide for Non-Lawyers

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NOTE: *The laws regarding small claims court actions were altered significantly by legislation that took effect on September 1, 2001. Changes include expanding the types of cases that can be heard in small claims court, increasing the monetary limits, lowering the filing fees, and broadening the options for representation of an entity in small claims court. Readers are strongly encouraged to review Colorado Revised Statutes §§ 13-6-401 through 13-6-417 and the Colorado Rules of Procedure for Small Claims Court (Rules 501 through 521), which can be found in Volume 12 of the Colorado Revised Statutes.*

The Statutes and Rules can be found in the reference section of any Colorado public library, as well as on the Judicial Branch website at www.courts.state.co.us (scroll down the left-hand side to Legal Research, then click on Colorado Rules and Statutes).

IS SMALL CLAIMS COURT RIGHT FOR YOU?

Can you get what you want?

The small claims court is a "court of limited jurisdiction." This means that the court cannot award more than $7,500, even if your claim is worth more. You will have to waive your right to the amount that exceeds $7,500, or you will have to bring your claim in a different court. You may also be entitled to recover your court costs and interest.

In addition, the small claims court can only handle certain kinds of claims. Basically, these are simple cases to recover money or property, perform a contract, set aside a contract, or comply with restrictive covenants. For example, a dispute between a landlord and tenant over the return of a security deposit can properly be brought in small claims court. So can a case involving a car accident, where insurance did not cover the damages to a car.

You cannot have a jury trial in small claims court. Under Colorado Revised Statute (C.R.S.) § 13-6-405(4), all claims are heard by a magistrate, unless one of the parties timely requests that a judge hear the case or unless that particular court location does not have a magistrate. The small claims court cannot hear cases of libel or slander, eviction, traffic violations, or criminal matters. For a full list of prohibited claims, see C.R.S. § 13-6-402.

There are some things the small claims magistrate (or judge) cannot do, even if you win. The magistrate cannot order someone to stop calling you at 3:00 in the morning or saying bad things about you in public. If you need help of this kind, then you should not be in small claims court.

Can you get organized? Can you think on your feet?

If you take your case to small claims court, you have to be able to tell the magistrate your story so that he or she understands why you are entitled to prevail in your case. You also have to be able to answer questions from the magistrate or the other side. Before you go to small claims court, you will need to gather evidence to present your claim, like a contract, pictures, or a set of bills.

Can you speak in public? If you go to small claims court, you will have to make a public presentation with people watching you. Can you think and speak when you are feeling stressed? You will have to try and remain calm even with your opponent there, who you may think is lying about you and the situation.

If you cannot do this, you should not be in small claims court.

IS IT BETTER TO SETTLE THAN TO GO TO COURT?

If you win, can you collect?

Does your opponent have any money? Is your opponent likely to have any money in the future? You have to think about the person you are dealing with. A retired person on social security probably isn't going to be better off in the future than he or she is now, so collecting a judgment, now or in the future, can be difficult. If you are unlikely to collect, or

if you have to hire an attorney to help you collect a judgment, it may not make much sense to spend the time to go through a small claims trial. However, a judgment might be collectable in a few years, even if it can't be collected now. Maybe your opponent just started a new job and may be able to pay in the future. Remember, judgments are valid for at least six years.

If you lose, can you pay?

This is a hard question for most people to answer unemotionally, because they believe they have a great case and couldn't possibly lose. But someone always loses. People often confuse what's fair or moral with what's legal. Before going to court, you have to take a realistic look at what happened. Tell people about your case and see how they react. If there is a possibility you might lose, you have to think about how you will pay a judgment.

Settlement is always an alternative. Many cases settle, even if there are attorneys involved. If you settle, you can structure your own result, rather than having a magistrate do it — you know what you can afford, and the magistrate doesn't. If the court has mediators, they can assist you in trying to reach a settlement.

PROCEDURES

If you decide to go to court, the procedures for small claims are simple, but they have to be followed.

Complaint

If you are bringing a claim, you will need a form called a "Notice, Claim and Summons to Appear for Trial" (called a complaint). You can get this form from the courthouse, or visit the Judicial Branch website at www.courts.state.co.us (click on "Forms & Self-Help" to download the form).

The first section asks for information about the person bringing the complaint, called the "plaintiff." Make sure to complete all of the information that is asked for in the form, including your telephone numbers. The second section asks for information about the person(s) or organization(s) you are suing, called the "defendant." Make sure that you sue the right person or organization. Also, make sure all of the names are spelled correctly. For example, if you want to sue a corporation, you write "Jones Corporation" in the defendant section. If you want to sue the corporation and one of its employees, you write "Jones Corporation and John Jones, individually." If you don't correctly name the right party and you win, you may not be able to collect your judgment.

The third section requires you to name the "registered agent" if you are suing a corporation. If a corporation wants to do business in Colorado, it must have a registered agent to receive legal papers, such as the complaint. You can find out who this person is by calling the Secretary of State. There is no charge for the call or the information. You have to serve the registered agent, or your case could be dismissed.

The third section also asks for further basic information about the defendant, which is designed to make sure that the small claims court has the authority to hear your case. If the defendant does not live in, work in, or go to school at a college or other institution of higher education in the county, you need to go to the small claims court in the county where he or she does (the exceptions being landlord/tenant and restrictive covenant claims).

The fourth section (Notice and Summons to Appear for Trial box) will be filled out by the court clerk when you file the complaint. The date included in this section is your trial date.

The fifth section asks for a description of the plaintiff's claim; for example, the amount of money/property you want to recover. You need to explain the basic facts of your case. This does not have to be detailed. For example, "I left my shirt with Jones Company to be cleaned, but they ruined it. It was a brand-new shirt." You will have your chance to present more detail at your trial.

After you fill out the basic information, you have to sign and date the complaint form.

File/Filing Fee

Once you have completed the form, take it to the courthouse and give it to the clerk of the small claims court — this is called "filing." When you file the complaint, you will have to pay a filing fee. The fee that you will have to pay depends on the amount of your claim. The court clerk can tell you how much to pay for the filing fee.

Service

The Small Claims Rules set out the procedure for serving the complaint on the defendant. (Rule 504 establishes the procedure for service; the Small Claims Rules are found in Volume 12 of the Colorado Revised Statutes.) Generally, a person who is not involved in the case or not a family member of someone involved in the case, such as a sheriff or a private process server, needs to deliver the complaint to the defendant or the registered agent. The plaintiff has to pay a fee to have the defendant served.

Alternatively, the form can be mailed by certified mail by the clerk of the court. The plaintiff will have to pay the cost for certified mail at the time the complaint is filed. If the certified mail cannot be delivered, the plaintiff may still have to get the sheriff or a process server to deliver the complaint.

The defendant must be served with the complaint at least 15 days before the trial date. If not, the trial date will probably have to be rescheduled. The plaintiff will get back a form that shows service was completed, including the date of service. This form must be filed with the court at or before your trial.

Response/counterclaim

The response, which is found on the back of Part 2 of the Notice and Summons to Appear for Trial, is the defendant's opportunity to describe the facts that show why the defendant thinks the plaintiff's claim is not valid. This is called the defense. The defendant can also file a counterclaim with the response. A counterclaim is a claim by the defendant against the plaintiff. The following is an example of a response and counterclaim:

> Ann files a claim against Company A. She says they did not cater her wedding reception according to the written contract she entered into with Company A. She paid a deposit of $2,000 and still owes $2,000. In her complaint, Ann says that she wants her $2,000 back and she does not want to have to pay Company A any more money because they ruined her wedding reception.
>
> Company A files an answer, stating that they should not have to pay Ann back the $2,000 deposit, because they carried out their end of the bargain. Company A also files a counterclaim asking the small claims court to order Ann to pay the remaining $2,000 because they properly catered the reception.

There are some special rules that apply to counterclaims. First, the counterclaim should arise out of the same situation or set of facts as the plaintiff's claim. Second, it cannot exceed $7,500 or the defendant must be willing to accept a maximum of $7,500. Third, a defendant does not have a right to have a third party brought into the case in order to resolve the counterclaim. Fourth, the counterclaim cannot be subject to any other court proceeding. If these conditions are met, then the defendant has a counterclaim that arises out of the same set of facts, and it must be brought in the case with the plaintiff or it is waived.

Normally, the defendant's response and/or counterclaim will be filed at the first scheduled trial date, unless the defendant objects to the use of a magistrate or if the defendant has a counterclaim for more than $7,500 and is not willing to accept less. If either or both of these are true, then the defendant must file the appropriate notice along with the response and/or counterclaim at least seven days before the trial date.

The defendant may choose to hire an attorney to represent him or her. However, if a defendant files a notice of representation and then appears without an attorney at trial or fails to appear at all, the court could find that the defendant acted in bad faith and award costs including attorney fees in favor of the plaintiff.

If the defendant hires an attorney, the plaintiff also has the right to hire an attorney to represent him or her, and the case may remain in small claims court. If an attorney appears in a small claims action, the case will still be handled according to the small claims rules.

If the defendant has a counterclaim for less than $7,500 and files it the night before trial, then the plaintiff can ask the court to reschedule the case, so that the plaintiff has time to prepare a response to the defendant's counterclaim.

This is an issue of fairness.

The defendant will have to pay a filing fee, just like the plaintiff. The fee to be paid by the defendant depends on how much the plaintiff is claiming, whether the defendant makes a counterclaim, and whether the case is removed to county or district court.

These fees are due whenever the defendant files a response, whether seven days before trial or at the time of trial.

KNOW YOUR CASE; THE JUDGE CAN'T

During any session of small claims court, the magistrate will handle lots of different cases. Your case is important, but he or she will have limited time to spend hearing your case. Your job as the small claims litigant is to prepare so that when you talk to the magistrate, he or she will be able to quickly and easily understand what your part of the case is about. That means you need to begin preparing as soon as possible after the filing of the complaint or the service of the response.

Read the papers the court gives you!!

The first step is to read and understand the paperwork. You may think this is obvious, yet many people never bother to read the papers they receive. Thorough instructions for both plaintiffs and defendants can be found on both the plaintiff's and defendant's Notice, Claim and Summons to Appear for Trial. If you have questions about the papers, you can ask the clerk to help you. But remember, the clerk cannot give you legal advice — he or she can only answer questions about the court's procedures and how to fill out the forms.

Make notes of what you want to say

Speaking in public is difficult for many people. In court, few people (even lawyers and magistrates) can remember everything they need to say without notes. So, before you go to court — as soon as you know that a court date has been set — you should make notes of the facts that are important for your case. It does not have to be and should not be complicated. Remember, the magistrate only has a short time to hear your case. Think about the simplest, clearest way to explain your case.

Maybe you want to make notes based on the sequence of events. For example, a plaintiff would say:

> On June 1, I signed a contract with Company A to clean my carpet. I paid a deposit of $50. They were supposed to be at my house on June 5. On June 5, I waited for them in the morning, but they never came.
>
> For the next week, I called at least once a day and spoke to the manager, Bob, about when they would be there. He arranged an alternate day, but they never showed up. Then I asked him to return my $50, but a check never came.
> Please make them give me my money back.

The defendant might say:

> On June 5, we went to the address listed on the contract, as we agreed. When we got there, no one was home. We waited an hour, but no one came so we left to do other jobs. The contract says that if the person is not there, they forfeit their deposit, so we get to keep the $50.

Maybe you want to give the magistrate a "picture" of the events. The plaintiff might say:

> I rented an apartment to Mr. and Mrs. Jones. When they left, the apartment was trashed. It was dirty and the carpets were torn up off the floor. The window in the kitchen was broken and the drains were all plugged. We kept their security deposit to pay for the damage, after we gave notice that we were going to.

The defendant might say:

> We hired a cleaning lady to come in and clean the apartment. She spent four hours cleaning, and when she left, the apartment was spotless.

You should describe your case in the way that makes sense.

Decide what evidence you need and put it all in one place

"Evidence" means the things that prove your case. If your case is about damage to your car, you probably need to take pictures and bring those to court. If your case is about a suit the dry cleaner ruined, bring the suit and the dry cleaner bag to court. You might need to bring a list of damages, if there are different pieces to sort out.

You need to decide the best way to present your evidence.

Photographs are usually very helpful if the "thing" that caused the problem is too large to bring to the courtroom. For example, you may claim that someone didn't paint your car properly. The paint had lots of little runs and bubbles, and the person doing the paint job didn't paint underneath the bumpers. You think you should not have to pay for that defective job. The car is too big to bring into the courtroom. You could bring it to the court and park it in the lot, but the judge probably does not want to recess court and go out in the lot to look at the car. It would make the security guards nervous — they would have to keep people safe outside and then redo all the security screening before anyone came back into the courtroom. Under these circumstances, it would be helpful to bring photographs of the car to court. But you have to think about how well the photographs prove your claim. If you take photographs from 20 or 30 feet away, they won't show little runs and bubbles or the unpainted areas under the bumpers. You need to take close-up shots, so the magistrate can see what you are talking about.

You might want to make a chart showing a time line of important events or a diagram showing how the event happened.

If your damages include out-of-pocket expenses, you might want to give the magistrate all of the receipts. For example, you hired the defendant to paint a room for a total of $40 but he didn't do it, so you paid $50 for paint and equipment and $50 for someone else to do the work. You should have receipts for all of these expenses.

You might decide that videotapes or recordings are helpful evidence. If you do, make sure that the equipment you need is available in the courtroom, or you will need to bring your own.

If you get really nervous when you have to speak in public, you might want to type up your notes and hand those to the magistrate to read along with you.

Whatever evidence you use should be organized in the way that you will tell the magistrate about your case. If your case is about a contract, that should be the first item in your pile of documents. If you are arguing about a specific item on a specific bill, bring that particular page of the bill with the item highlighted. Don't just bring a pile of documents and expect the magistrate to understand your case.

All of the things that you present as evidence should be held together with a staple. Again, make it as simple as possible for the magistrate, because then he or she can listen to you rather than shuffling through a bunch of papers. If the magistrate is hunting through papers, he or she is probably not listening to you. That is not good.

Decide what witnesses you need, if any, and bring them to court

If your case is about what a contract says, the best evidence is the contract itself. But, sometimes a piece of paper or a photograph will not prove your side of the case. For example, you might want to prove that someone promised you something, but that promise was never written down. If that promise was made in front of a witness, you should bring the witness with you to testify. If your case is about the way a car accident happened and someone was with you in the car, bring that person to court.

You may need an "expert" witness. A person is an expert in a particular field if he or she has knowledge, skill, experience, training, or education that most people don't have. For example, maybe your case is about car repairs or plumbing repairs that were not done correctly. Don't assume that you or the magistrate knows about things like that. You probably want to bring a witness with you who is an auto mechanic or a plumber to testify as an "expert" witness. If the defendant, an auto mechanic, stands up and talks about how the parts fit together and how she never worked in the area that blew up, you may not know enough to contradict her. But your expert can stand up and explain why the mechanic's testimony is not right or doesn't make any sense.

If a witness does not want to come voluntarily, you can get a subpoena at the clerk's office. A subpoena is a court order that instructs the witness to appear at the place, time, and date listed in the subpoena. You will need to have that person served with a subpoena, just as if he or she were being served with other court papers: that is, in person by someone who is not associated with your case. If the subpoenaed person does not show up, the magistrate can issue an arrest warrant to make him or her appear.

If your case depends on one person's knowledge, but that person isn't there to testify, you will have a tough time proving your case and your chance of losing is greater. So do some troubleshooting ahead of time. Subpoena witnesses if you really need them. Make sure the witnesses (and you) know which courthouse you are all supposed to be at. Some jurisdictions hold small claims court in two or more places. You should also make sure the witnesses know what time court will start.

Visit court ahead of time

How many times have you been in court? For many people, the answer is "never." Some people have gone to court for other things, like a traffic ticket, but have not had to speak or present evidence. The courtroom can be a scary place because it's unfamiliar. If you can, visit court ahead of time. You can see where the magistrate sits and where you will sit when you talk to him or her. You can see where the other side will sit. You can plan your case, because you can see what other people do and whether it works.

If you are well-informed, you will be calmer and it will be easier to present your version of the case and respond to the other side's version or the magistrate's questions. This will help improve your chances of getting what you want, whether you are the plaintiff or the defendant.

If you have questions about the procedures, magistrates or clerks will usually be happy to answer them, as long as you don't interrupt court.

Practice, practice, practice

Read over your notes lots of times, out loud. Talk to the walls or your pet. You will get used to the sound of your own voice, and you will become familiar with the facts of your case. That will make it easier to tell your side of the case and then to listen to the other side or the magistrate when you are not speaking.

EVERYTHING YOU NEED TO KNOW FOR TRIAL, YOU LEARNED IN SCHOOL

Be on time

Better yet, be early. If you aren't there on time, it can mean that you lose your case. If the plaintiff appears, but the defendant doesn't, the magistrate can enter a default. That means the defendant loses, without an opportunity to be heard, and the plaintiff will probably get everything he or she is asking for. If the defendant appears, but the plaintiff doesn't, the magistrate can enter a default or dismissal with prejudice. That means the defendant wins and the plaintiff will not have a chance to bring that claim again anywhere else. (If the defendant is on active duty in the military, special rules apply. See Rule 515 for details.)

However, if a dismissal or default is entered, the losing party can ask the magistrate to change his or her mind. The losing party will have to file a "Motion to Set Aside" within 30 days of the judgment or dismissal and explain why he or she did not appear at court when scheduled. These motions are not usually granted — the losing party really has to make a strong case showing why he or she could not be in court. Magistrates don't like to grant these motions because other people were able to be there on time.

The moral of the story is to show up and be there on time.

Never be rude

TO ANYONE!! The magistrates, the clerks, and the courtroom deputies always talk before court starts. If you act badly, the magistrate will know before he or she ever comes into the courtroom. This is not the first impression you want the magistrate to have.

Don't forget your homework

You organized your exhibits to help you win your case. Make sure you bring them. Give a copy to the magistrate and to your opponent. Keep a copy to refer to for yourself.

Wait your turn — don't interrupt

Most people think that the magistrate has to know **right now** that the other side is telling a lie, so they interrupt. But the interruption just creates problems. First, the magistrate has to listen to both parties, even if they are lying. If you interrupt, it just makes the magistrate's job harder. Second, it may make the magistrate think that you are being rude. If the magistrate has to decide a close question, it does not help for the magistrate to have a bad impression of you. If the magistrate decides that he or she needs to know, the magistrate can stop the other side and ask you to explain. Finally, the trial is probably being tape recorded, in case one of the parties decides to appeal. A tape of two people talking at the same time is not helpful, especially if you are the person appealing.

Listen

While you are waiting your turn to speak, don't just stew about the situation. Listen to your opponent and make some notes about what you want to say. Listen to what the magistrate says. If the magistrate asks a question, answer it. Don't just go on reading from your notes. Listen to what the witnesses say. Take notes so that you can tell the magistrate why he or she should believe you or your witnesses and not the other side.

At the end of the trial, the magistrate will usually state the facts, who won, and the amount of judgment. The rules also allow the magistrate to make an award of costs (the filing fee, the service fee, witness subpoena fees) to the winning party.

BASIC COLLECTION PROCEDURES

If you won, it's your job to collect the judgment. The court can't do it for you. The first step is to ask the losing party, called the debtor, to pay. If he or she pays, then you need to file a Creditor's Satisfaction of Judgment, so the court knows the case is over. If the debtor does not pay, ask the magistrate to order the debtor to answer "interrogatories." Interrogatories are questions designed to help identify property the debtor owns that could help you get payment. This includes things like wages, bank accounts, a house or car, or something else of value. For example, if you know where the debtor works, you can garnish wages of the debtor to get your money. If the debtor fails to answer the interrogatories when the magistrate says, the magistrate can issue a bench warrant. That means the debtor can go to jail until he or she answers the questions. (However, the debtor cannot go to jail for failure to pay a judgment.)

If you lost, you can ask the magistrate to "stay" the proceedings to allow you to appeal. That means the winner cannot try to collect the judgment. However, if you appeal, you will have to pay additional costs and may have to put up a bond. But an appeal is only a review of the transcribed tape by a district court judge, not a trial all over again.

A word of caution about collecting a judgment: A certain amount of wages are protected against collection; houses in which a debtor lives and cars needed to go back and forth to work are also protected against collection of a judgment, as are welfare benefits, social security, and even some bank accounts. You may want to get the advice of a lawyer about these judgment collection matters before you begin any collection efforts. And remember, you have at least six years to collect your judgment.