

JCA - ATTORNEYS & THE LAW

SMALL CLAIMS COURT WINNING

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“Small Claims Court gives us working people a break because lawyers aren’t allowed*”

** In some States, like FL, the hucksters ARE allowed in Small Claims Court!*

If you have a legal problem where the amount of money (or other damages) is under a certain amount (Usually \$5,000 or so), you may want to go to **Small Claims Court**, although you can go to a higher level court where you may have an attorney to represent you. There are no attorneys allowed in Small Claims Court (With some exceptions). There is some paper work (forms which you can obtain from your local Small Claims Court) to fill out, and then you can improve your chances of winning if you follow some simple rules.

Either using the internet or by going to your local small claims court, obtain the “complaint” (suit) form and fill it out, bring it to the court with a filing fee (usually around \$50), and they will stamp the form and then give you a “Proof of Service” form to be used by anyone over 18 years of age to “serve” a copy of the complaint (suit) form on the person you are suing. That person over 18 then fills out the Proof of Service form and you take it back to the court. The person you are suing then has approximately 30 days to “answer” the court about your complaint (suit).

Small Claims Court is very informal. You tell **your** story to the Judge, and the other person tells **their** story to the Judge, and the Judge decides whom to believe. Some typical problems that would be handled by Small Claims Court are (and these are REAL cases!):

- You want a refund from “**Discount TV Repair**” in Las Vegas because they gyped you;
- You want your money back from “**Bob’s Autodynamics**” in Las Vegas who gyped you;
- You want \$2,500 back from “**US Data Corp**” in Omaha because they scammed you.

Now, although Small Claims Court is very informal, it can still be somewhat confusing. So, here is some basic information which can help you, and possibly help win your case:

1. Before you sue, be sure that whenever you contact the person you might have to sue, you write down his name, the telephone number at which you are calling him/her, the date, the time, and exactly what he/she said. Bring it to Court with you.
2. Follow up with a letter which is sent **Certified** with a **Return Receipt Requested**, and which contains all the information you wrote down. In that letter, be very polite and do not threaten. Just end the letter by asking for whatever you want, and give the person fifteen (15) days to get it to you. Make sure you keep a copy of the letter and attach the certified receipt to it. When the Return Receipt (signed by the person you are suing) comes back to you, attach it also to the copy of the letter and bring it to Court with you.
3. If you don’t get what you want within fifteen (15) days, you may then get the forms to sue that person (called a “complaint” form and you are called the “Plaintiff”, and the “proof of service” form, which the Court wants to show that the person you are suing (called the “Defendant”) actually was told that he was being sued. Anybody over 18 (or use a Sheriff, Constable, etc.) who is not party to the suit may deliver the documents to the Defendant .

4. When you do go to Court, the process begins by the Court Clerk calling the **List** or the **Calendar** or the **Docket**...this is where the Court Clerk reads a list of all the Plaintiffs (You - those people doing the suing), and the Defendants (The other guy - those people being sued), to see if they are present and ready for trial. When you hear your name, answer by saying "here". They may ask you if you are ready for trial, and you say "yes". After all the lists are called, the Judge may send you and the other side to meet (usually in a private room, if available) to attempt to settle your case without bothering with a trial. This process is called "mediation". If you don't settle, many times the Judge will be biased against the party who refuses to settle.

If the other person isn't present, the Court Clerk or the Judge may automatically issue a "default". This means you win because the other side didn't show up. Or, after the lists are called, you may have to ask the Court Clerk if they will issue a default. Even if the Judge issues a default, the other side may later ask for the default to be removed, and you start the process all over again. Depending on the Court, the other side may have up to six (6) months to ask that the default be removed.

5. When your case is called, have all your letters, receipts, postal receipts, bills, etc. ready to show the Judge, and:

- **NEVER interrupt the other person when it's their turn to talk.**
- **NEVER raise your voice...speak calmly and evenly.**
- **BE polite...address the Judge as "Your Honor", and address the other side as "Mr." or "Mrs." or "Miss".**
- **Use kind words – don't say, "Your Honor, he's a liar!" Instead, say, "Your Honor, I think he's mistaken".**

6. Remember, even if you win and get a "judgment" (the court rules in your favor and tells the other side to give you what you want), you may still have to go back to Court to get the other side to do what the Judge ruled. However, the Court will usually add in all the money you spent for Sheriff's, Constables, Marshals, etc.

NOTE: These rules of conduct and demeanor also apply in Traffic Courts, Criminal Courts, and just about any other Court. Judges **do not like** loud voices, strong words, bad language, tempers, and generally anything that is impolite or not gentlemanly or ladylike!

Judges **do like** you to have all your documents, with proof of being delivered, ready to present to the Court and in chronological order.

They do not like "hearsay", but do like what you yourself actually know or saw or heard or did. They like to have witnesses or other evidence to back up "corroborate" what you claim you know or saw or heard or did.

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