


Small Claims Court: Legal Resources A Guide for Public Libraries



**Small Claims Court Legal Resources:
a Guide for Public Libraries**

An  Webinar

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Agenda

- Receive a general overview of the Small Claims process including going to court and collecting money
- Become familiar with key terminology and court procedures used in Small Claims
- Tour the California Court's self-help center's sections on small claims

Agenda

- Have a basic understanding of the online resources to assist parties in completing Small Claims forms
- Learn about the Small Claims advisory services available at local superior courts
- Learn about additional print and online resources for locating small claims information and forms

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Small Claims Overview

- People represent themselves
- Attorneys cannot represent litigants
 - Except on Appeal

Parties Involved in Small Claims

- Person who sues is the **Plaintiff**
 - Any person, at least 18 years, or business
- Person who is sued is the **Defendant**
 - Any person or entity (business, corporate or government)
 - Exceptions

Is Small Claims the Best Option

- Does the claim justify the cost?
- Is the person or business able to pay the money owed?
- No more than two cases for over \$2500 filed in the same calendar year
- Must sue in right court and location
 - Called Venue

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Time Limits to File in Small Claims

- **Personal Injury** – Two years from date of injury. If the injury isn't immediately discovered, two years from the date it is discovered.
- **Oral Contract** – Two years from the date the contract was broken
- **Property Damage** – Three years from the date the property was damaged.
- **Written contract** – Four years from the date the contract was broken
- **Malpractice** - One year from the date of malpractice
- **Fraud** – Three years from the date or of the date of discovery
- **Government Entity** - Must file written claim with agency before filing lawsuit in court

How Much and How Often Can a Person Sue?

- Claim must be for money
 - \$10,000 for "natural persons"
 - \$5,000 for corporations
- Claims for \$2,500 or more limited to two per year
- Claims for less than \$2,500 are unlimited

Examples of Cases Heard in Small Claims Court

- Landlord/tenant issues
- Car accidents
- Claims against businesses and corporations
- Bad checks
- Breach of contract
- Equitable relief in the form of
 - Rescission
 - Restitution
 - Reformation
 - Specific performance

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How do I Sue in Small Claims Court?

- Plaintiff's Claim (Form SC-100) filed with the court
- Clerk will select hearing date within 20 to 70 days from date claim filed
- Copy of Plaintiff's Claim served to the defendant
 - Called service of process
- Proof of Service (Form SC-104) must be filed with the clerk's office at least 5 days before court date
- Forms available at California Courts website: www.courts.ca.gov/1017.htm

Plaintiff's Claim (Form SC-100)

The image shows a thumbnail of the California Small Claims Court Form SC-100, 'Plaintiff's Claim and Order to Show Cause or Answer'. The form includes sections for 'Return to the person being sued', 'How to pay the claim', 'How to answer the claim', and 'How to sue for more'. It also features a table for listing the people involved in the dispute.

I've Been Sued... Now What?

- Defendant can sue the Plaintiff back
- Called countersuing
- To countersue, defendant files the Defendant's Claim (Form SC-120)
 - Available at California Courts website: www.courts.ca.gov/1017.htm
- May not be for more than \$5,000 or \$10,000 if the defendant is a natural person

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Defendant's Claim (Form SC-120)

SC-120 Defendant's Claim and ORDER TO GO TO SMALL CLAIMS COURT

Notice to the person being sued:

- You must go to court on the first date listed below. If you do not go to court, you will lose the case.
- If you do not go to court on the first date listed below, you will lose the case.
- If you do not go to court on the first date listed below, you will lose the case.
- If you do not go to court on the first date listed below, you will lose the case.

Order to Go to Court:

The people in () and () must go to court. () is the person being sued.

Name	Address	City	State	Zip	Telephone

Instructions for the person suing:

- Fill out pages 1 and 2 of this form. Then make copies of all pages of this form. Make 1 copy for each party named in the case and 2 copies for yourself. Take or mail the original and two copies to the court clerk. (Fill in the court clerk's name and address on the back of the form.)
- You must file a claim with the court clerk within 10 days of the date you were sued. You must also pay the court clerk the filing fee. (See the court clerk's office for more information.)
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Filing Fees

- A plaintiff (or a countersuing defendant) is charged a filing fee of:
 - \$30 for a claim up to \$1,500
 - \$50 for a claim between \$1,500-\$5,000
 - \$75 for a claim over \$5,000
- *Frequent filers (> 13 within a calendar year) pay \$100 per claim
- Plaintiff may apply for a fee waiver (FW-001)

Naming an Individual

- Must sue using the defendant's **exact legal name**
- An individual
 - First name, middle initial and last name
 - Example: "Betty M. Hart"
- A husband and wife
 - Listed separately
- Other Plaintiffs or Defendants (Form SC-100A) if case involves three or more Plaintiffs or Defendants

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Naming a Business

- Owner of a sole proprietorship doing business under a fictitious business name:
 - "John P. Jones d.b.a John's Shoe Store"
- Partners on behalf of a partnership:
 - "Betty M. Hart, individually and as a partner in Hart and Simons, a partnership"
 - "Joan J. Simons, individually and as a partner in Hart and Simons, a partnership"
- Obtaining a fictitious business name statement (d.b.a.)
 - County Clerk's office
 - City Hall, Business License Division

Naming a Corporation

- A corporation:
 - "Beacham & Beacham, Inc."
 - Or "Abacast Corporation d.b.a. Maritime Company"
- More information about a corporation
 - www.ocsmallclaims.com
 - Secretary of States's Website: www.kepler.sos.ca.gov/list.html

Describing Claim for Money Damages

- **Money Judgments** (provide dates and the basis for the amount of the claim)
- "On 11/2/01 Maria Cortez stopped paying on a contract dated 7/9/01. The remaining balance to be paid is \$438.22."

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Describing Claim for Money Damages

- **Conditional Judgments**
 - "Return of 1988 Toyota Corolla Vin# or \$5,000"
- **Rescission**
 - "The phone service I ordered with Pacific Bell never worked. I would like to have this contract rescinded."
 - TIP: It is still a good idea to indicate a dollar amount on the claim. The judge may find that a monetary judgment is appropriate.

Where do I File my Case?

- Sue where:
 - The defendant resides or does business
 - The defendant entered into the contract
 - The contract was to be performed
 - The real property is located
 - The accident/injury occurred
- If there is more than one proper venue, plaintiff may choose the one that is most convenient

How do I File my Papers with the Court?

- Three ways to file:
 - File in Person
 - Mail
 - Send self-addressed envelope so that the court may send the documents back – include original and a copy
 - Some courts permit online filing of the initial claim
 - www.icandocs.org (Orange County)
 - www.lasuperiorcourt.org (Los Angeles County)
 - www.saccourt.ca.gov/efiling/small-claims.aspx (Sacramento County)

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How do I Tell the Defendant they are being Sued?

- Called "Service of Process"
- Gives the date, time and place of the hearing
- Who can serve the court papers?
- How are the court papers served?
 - Certified Mail through the clerk
 - Sheriff
 - Personal service
 - Substituted service
- When must the court papers be served?
 - Personal service must be done at least 15 days before the court date. If the defendant lives outside the county, service must be done at least 20 days before the court date.
 - Substituted service adds 10 days prior to court case.

Who must be served?

- An individual – claim served to that person
- A business – claim served to the owner or a person in charge
- Corporation, Limited Liability Company, Limited Partnership
 - Secretary of State's Office has the name of the party (referred to as the Agent for Service or Process) who can be served
 - Available online at www.kepler.sos.ca.gov/list.html

Mailng Address
5457 Fioranca Ave
Missoula, MT 59802
Agent for Service of Process
Bruce Covington
6125 Pine St.
Ball Gardens, CA 90201

Can a Claim be Served Outside California?

- A claim must be served in California, except:
 - When an auto accident happened in California, and the registered owner or driver lives out-of-state.
 - A dispute involving real property in California, when the owner of that property lives out of state

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Getting People, Papers and Things to Trial

Evidence

- Parties have the right to offer evidence through witnesses
 - Voluntarily
 - Serve witness with court order to appear "subpoena" (Form SC-107)
- Special rules apply for "consumer records"
 - Party may subpoena records and papers using Form SC-107)

What Happens at the Hearing?

- Hearing is informal
- Who will hear the case?
- Parties may settle before the trial
- If the defendant was properly served but fails to appear, the plaintiff may be entitled to a default judgment
- Plaintiff presents case first, then defendant
- Judge will ask questions
- Judge can render decision at the hearing or send it by mail

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I Won my Case! How do I Collect the Money?

- The money the court awards is the judgment
- Judge can render judgment at the hearing or send it by mail
- Party who wins the case and collects the money is called the judgment creditor
- Party who loses the case and owes the money is called the judgment debtor
- Judgment creditor must take steps to collect. The court will not do it.
- Judgment creditor must wait 30 days from the date of mailing on the Notice of Entry of Judgment to begin collecting
- Judge can make the judgment conditional

Can the Case be Appealed?

- Only a losing defendant (or plaintiff who has lost a countersuit) may appeal
- Must be filed no later than 30 days after the date of mailing on the Notice of Entry of Judgment
- Appeal results in a **new hearing or trial de novo**
- Filing fee is \$75
- Attorneys may represent the parties

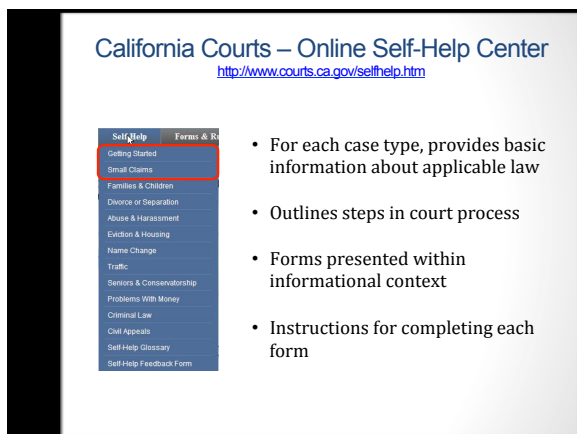
Collection Methods

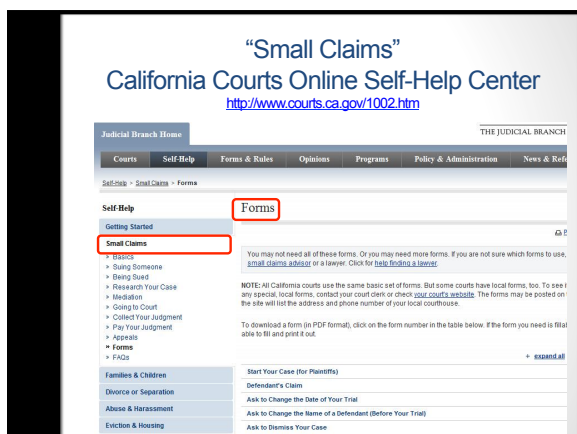
- Three ways Sheriff can help:
 - Garnish wages
 - Levy bank account
 - Till Tap/Keeper
- Other collection methods
 - Suspend Driver's License
 - Place a lien on property
 - Third party

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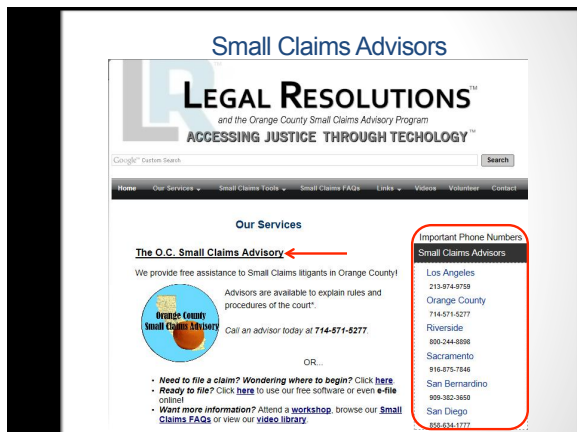




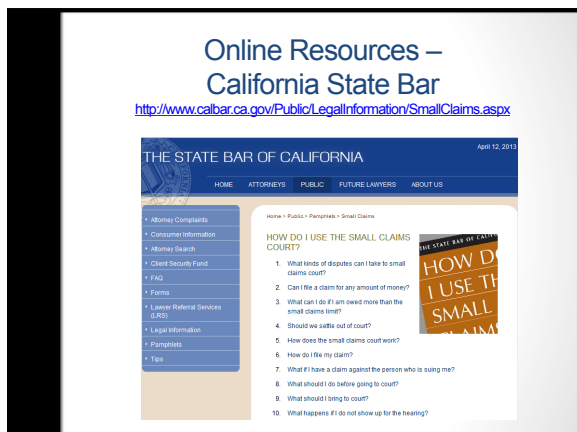


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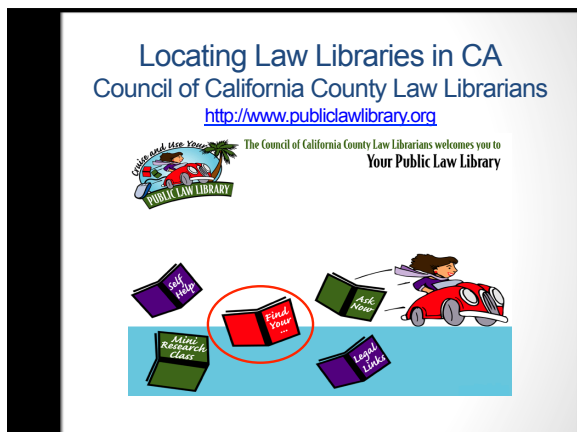


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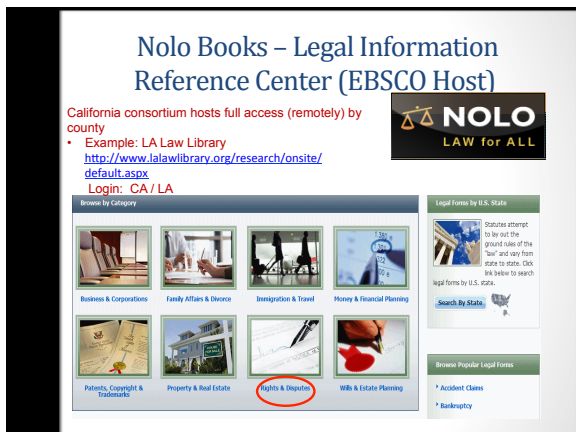




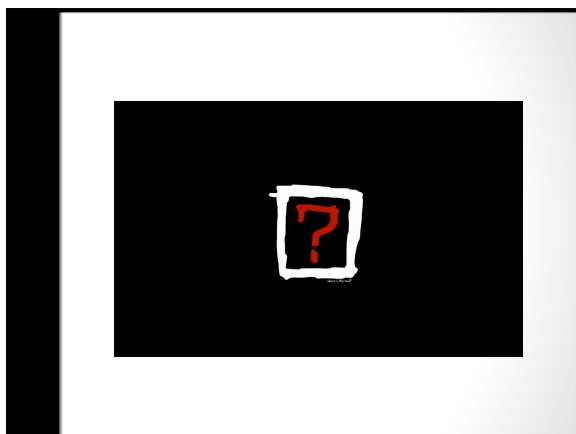


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Thank You!




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