

IMPROVING YOUR ODDS IN SMALL CLAIMS COURT

The following information applies to California courts. The basic principles are the same in any other state however. In California Small Claims court, when the person suing files his case, he immediately gets a trial date. Nothing in between. You show up and give it your best shot. In other states, this type of action may have a different name than "Small Claims."

Any case in Small Claims is always a toss-up. You have a 50-50 chance of winning or losing no matter how good or bad your case is. Here are some thoughts about tipping the scales in your favor.

[If you are the person suing someone else:](#)

1. Getting up to bat. If you are the person who is doing the suing (the Plaintiff), you will get to talk first. On the day of your court hearing, the court clerk will call out your case name and ask you to step to the front. Sometimes there will be signs at the table, "plaintiff" and "Defendant." If not, just watch to see where others go. Greet the Judge: "Good Morning, Your Honor." When he gives you the green light, your first sentence should summarize the main points of your case. For example, "I hired XYZ company to inspect my roof, but it later leaked. I'm suing to recover what I paid them and the expense to fix the damage." Then you can expand a bit.

2. Don't improvise. It is extremely important to know exactly what you are going to say when you first talk. It is OK to refer to notes, but do not read your entire statement from a piece of paper. The judge will fall asleep. **DON'T TRY TO SOUND LIKE A LAWYER!!** (Even lawyers shouldn't sound like lawyers). Talk normally. And keep things reasonably short.

3. Your evidence. Tell the Judge what evidence you have.

The proper address is "Your Honor." Do lots of Your-Honoring throughout the proceeding. For instance, "Your Honor, I have here a copy of the inspection report and I also have a witness with me who will testify that the inspector should have seen the problem."

4. Highlight your papers. Whatever you wish to call the Judge's attention to on the papers that you are going to hand him should be highlighted in yellow. When you eventually hand the documents to the bailiff (the uniformed court person) to give to the Judge, make the comment, "I have highlighted the pertinent language in yellow, Your Honor." Make it as easy for the Judge as possible. Have an extra copy for the person you are suing. When you give the copy to the bailiff, also give a copy to the suee. Make sure you keep the original yourself.

5. Witnesses. If you have a witness, let him come right to the point as to things that he personally knows, or has heard the other side say. Tell the judge what he is going to say: "Your Honor, I have Mr. Tells-It-Like-It-Is here to testify. He will explain that . . . [whatever he is going to tell like it is]. If a witness is unable to come to Court, get an Affidavit from him. This would be a short statement (one-half page, double spaced, if possible) of how he would testify, signed by him. The last paragraph must contain the sentence, "I declare under penalty of perjury under the laws of the State of [Your State], that the above is true and correct." There should be a date and the name of the city where it was signed. For instance, "July 10, 2003, at San Diego, California." Spend \$10 and have it notarized if you can. Where the witness signs, type his name below the line.

6. Witness subpoenas. If a witness is unwilling to come to court, you can force the witness to come by serving a subpoena upon him. First, however, tell him that you are willing to pay him. See more below. To obtain a subpoena, call the court and inform them that you need a subpoena to compel a witness to appear. Once the court gives you the subpoena, you must have the Marshall or Sheriff deliver the subpoena to the witness. The cost is about \$25. You must also pay the witness a fee [\$35 is the range currently]

and mileage fees of (whatever the current IRS rate is) a mile for every mile they drive to and from the court. You must pay this in advance. Simply have the Marshall deliver the check along with the subpoena. Once the person has been served with the subpoena, they must appear in court on the day listed on the subpoena. You do NOT have to serve a subpoena upon the Defendant, the person you are suing: he is required to come to court after you serve the small claims lawsuit upon him.

7. Paying the witness's way. Needless to say, such a witness will be unhappy at being forced to appear. So once you know how much it would cost to subpoena, call the witness and offer to pay the sum, plus his mileage each way. If he agrees, explain that you will have to send a subpoena and the money up front. The witness may now be more inclined to show up. But make sure you send the subpoena. Otherwise, if he changes his mind, you have nothing to compel his attendance.

8. Don't bring papers you don't need. Bring only the minimum number of papers that you will actually need. You may go to Court with a box full of documents and photographs and the like, but the Judge is never going to read them. Keep in mind, **MAKE IT EASY FOR THE JUDGE TO DECIDE IN YOUR FAVOR.** You will have a total of about 3 minutes to present your case. Nothing more. As such, make sure that your presentation doesn't go longer than three minutes. If you have a witness, you may get a couple of minutes more. Make sure the witness keeps it brief also. This is not People's Court, where one case must fill up a whole half hour.

9. Be organized. Also make sure that you have the papers in the order so that when you give them to the judge, you can avoid fumbling around. Attach to each paper a 3" x 5" piece of paper (or card) identifying the paper. For instance, you might simply make a note saying "offer" attached to the Deposit Receipt, "counter-offer" attached to the next document, and "escrow instructions" to the appropriate papers. Don't assume that the Judge is nearly as familiar with these papers as you are.

DO NOT INTERRUPT ANYONE.

The judge will jump on you if you interrupt the other party,
and will excoriate you if you interrupt him.

10. Don't put on a show. Do not roll your eyes, make gestures, act disgusted or otherwise put on any such display while the other side is talking.

11. Give the judge what he wants. If the judge asks you a question that takes a Yes or No, give him what he wants: "Yes, Your Honor." If it requires an explanation, ask "Can I explain." If he says, "No" believe him.

12. Make a good impression. The Court will be influenced by your appearance! Be neat and wear your best outfit. Even a tie if you own or can borrow one. Jeans may be fine for the boat dock, but in most cases you are going to be in front of a conservative, middle-class Judge. Leave your flashy jewelry at home. Dress as if you were going to church, even if you never attend. Even if you fall short of the Hugo Boss look, make it apparent that you respect the occasion enough to give it your very best. If you are outside the norm with respect to rings that pierce body parts other than your ears, or wear your hair in highly unusual styles and/or colors, do your best to come back to mainstream America for a day.

13. Appeals. If you lose, you have no right to appeal if you are the Plaintiff (California – this may be different in another state). If you are the person being sued (the Defendant), you do have the right to appeal, but it must be done within a short period. Check with the Small Claims Clerk in the Civil Department of the courthouse for this information.

14. Avoid snatching defeat from the jaws of victory. Last, if you feel things are going your way, **STOP TALKING**. When the Judge is trying to review papers, or is mulling over his decision, do not keep on talking simply for the sake of making noise. If you had ever watched People's Court on television, you will get a fairly good idea of what to expect in Small Claims Court.

If you are the person being sued (defendant):

15. Have your opening prepared. Most of the above applies. Be sure to preface most of your comments and answers with "Your Honor" (even though I don't continue to do so sometimes below). Let the Plaintiff put his case forward. Make note of anything you disagree with. Wait until the judge tells you to talk. Know exactly how you are going start off. "I have been repairing roofs for 12 years. I am licensed by the state and have a copy of my license with me. I inspected the damage the plaintiff claims, and it was caused by his walking on the roof." Your attitude should be one of determination that you are going to win this case. DO NOT start off immediately covering the notes you made of what the plaintiff said that you disagreed with. That can come later.

16. This isn't the Comedy Store. Nothing should be funny in court. Even if the judge cracks a joke, don't even smile. This is serious to you and you resent the fact that you are being sued needlessly. On the other hand, if you are the Plaintiff and the judge cracks a joke, it is OK to smile. But don't fall all over yourself laughing.

17. When the plaintiff shades it. The Plaintiff may tell whoppers. If so, restrain yourself from calling him a liar. If the testimony the plaintiff lies about is critical, simply say something like "Mr. So-and-so said [whatever he said that you didn't like]. That simply is not true [or correct]. Let me explain." And then give your version, or show a document, or call a witness.

18. After you finish, shut up. When you finish presenting your side of the story, PUT A SOCK IN IT. Don't babble on. Remember the 3 to 5 minute rule. The judge may ask the other side some questions. When he is finished, he may ask for your input. If he doesn't, and you want to counter whatever the other guy is saying, ask "May I comment on that, Your Honor?"

19. The Judge's ruling At some point the judge will start to rule,

and explain why he is doing so. If it is going against you, let me repeat again: **DON'T INTERRUPT**. After he finishes you can always ask, "May I address one point, Your Honor." And do so **only if he gives you the go-ahead**. Otherwise, take your beating and be wiser for it.

20. Delayed ruling. On the other hand, the judge may say, "I'm going to take this under consideration." Usually he knows who he is going to rule in favor of, but doesn't think that it would be a good idea right at that point. The loser might not take it so well. So you will get notification in the mail a few days later.

21. Negotiating. The judge is not going to write a check for the winner out of the loser's bank account. Getting a judgment is only 1/3 of the battle. Collecting is often much more difficult. If you win, consider making a deal to take 10% off the judgment if the defendant pays you within a certain short period. You may want to send a letter to that effect, ". . . if I receive your check no later than Friday, January 31." Pick a date a couple of days after a normal payday: the 4th or 19th of the month, for example. If you lost, and think the judge was wrong, appeal. Then you can consider calling the other side and making an offer for maybe 50% of the judgment. If not accepted and you lose again in the appeal, you can make an offer to pay 75%, or make payments, or whatever.