



## EARLY CARE & EDUCATION LAW PROJECT

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### WHAT YOU NEED TO KNOW ABOUT SMALL CLAIMS COURT

In the operation of your child care business you may encounter problems which force you to go to court. These problems may range from a parent who is not paying you for child care services to a landlord that fails to make necessary repairs in the apartment you are renting.

Before you go to court, it is important to understand what will happen on your day in court and how you should prepare yourself for your court appearance. This handout is intended to help you understand what to expect in Small Claims Court and it is not intended to provide legal advice.

#### WHAT IS SMALL CLAIMS COURT?

Small Claims Court handles civil cases where the amount of money involved is \$7,500.00 or less. It is a special court where disputes are resolved quickly and inexpensively. Rules are simplified and the hearing is informal. There are no lawyers, no rules of evidence, and no juries.

#### WHO CAN SUE IN SMALL CLAIMS COURT?

In order to sue in Small Claims Court you must be:

- At least 18 years old or legally emancipated
- Mentally competent to file or defend a case in Small Claims Court

Almost anyone can sue or be sued in Small Claims Court:

- You can sue another person or a business
- A business can sue a person or another business
- You don't need to be a United States citizen to file or defend a case in Small Claims Court

What type of case is not allowed in Small Claims Court:

- A case against a federal agency (for instance, you cannot sue Community Care Licensing in Small Claims Court)

#### WHAT CAN A PLAINTIFF (SUING PARTY) RECOVER IN SMALL CLAIMS COURT?

## **MONEY**

The amount of money that can be recovered in Small Claims Court depends on whether you are operating your child care business as an individual or as a corporation. In most cases, a Family Child Care Home will be operating as an individual and not as a corporation. If you have questions about whether you are an individual or a corporation, contact Public Counsel's Early Care and Education Law Project at (213) 385-2977 ext. 300.

- **Individuals may recover up to \$7,500**
- **Corporations may recover up to \$5,000**
  
- **You may file only two cases per year for amounts over \$2,500 each**
- **You may file as many cases as you like for amounts below \$2,500 each**

## **OTHER REMEDIES**

Normally you may only recover money, except in certain cases where the judge may grant what is called "equitable relief." Equitable relief means that the judge can order the Defendant to do something or not do something other than pay money. Here are a couple of examples of what the judge may order other than money:

- Rescission of a contract. This means, for example, if a parent is suing you based on the Parent-Provider contract and the judge decides that the contract is extremely unfair or involves fraud, then the contract can be voided.
- Restitution. This is where someone has taken your property and the judge orders the person to return your property. You may encounter this situation if, for example, a parent takes home toys that belong to you and refuses to return them. In this case, if the judge determines that the toys are rightfully yours, the judge may order the parent to return the toys to you.

## **WHAT ARE THE TIME LIMITS ON FILING CASES IN SMALL CLAIMS COURT?**

By law, there are certain time limits for filing a lawsuit. Time limits are different for different types of cases. If the Plaintiff waits too long, he/she may not be able to recover in any Court.

California Statute of Limitations Periods for Common Claims:

- Personal Injury (someone got hurt): 2 years from the injury or the date it was discovered. A minor has 2 years from his or her 18th birthday to file a case.
- Oral Contracts (a verbal agreement): 2 years from the date the contract was broken.
- Written Contracts (agreements in writing): 4 years from the date the contract was broken.
- Damage to Personal or Real Property (damage to your personal property or your home): 3 years from the date the damage occurred.

## **WHAT DO I NEED TO DO BEFORE I FILE A CLAIM IN SMALL CLAIMS COURT?**

**Have you tried to resolve the problem?**

You should try to contact the Defendant to resolve the problem before you start the Small Claims process. You must make a demand on the other person and ask for the money, property, or other relief that you intend to ask for in Small Claims Court. You can make the request verbally or in writing. When you make your written request be sure to:

- Send it by mail
- Request return receipt from the US Post Office
- Keep a copy of any letters sent for evidence

### **Have you thought about mediation?**

You should consider mediation as a way to help you resolve your case outside of court. Mediation is available for all types of disputes and allows both parties to have control over the outcome. It may help you maintain your relationship if you are suing a:

- Parent
- Business Partner
- Family Member
- Landlord
- Neighbor

For more information, please read Public Counsel’s handout entitled “Mediation vs. Litigation: Things to Consider Before Going to Court.”

### **Do you know how much money is involved?**

You will need to think carefully about how much money to request. You have to prove to the judge that you are entitled to the amount of money that you claim. You can prove your claim by presenting almost any kind of evidence:

- Canceled check
- Drawings
- Letter
- Professional damages estimate
- Photographs
- Receipt
- Statements – yours and witnesses
- Warranty
- Written contract

## **HOW DO I FILE A CLAIM IN SMALL CLAIMS COURT?**

### **Find the Right Court**

There are 28 Small Claims Courts in the County of Los Angeles. You can only file your case in one court and you must choose the right one. This is called the venue.

- You can file in the court nearest to where the person you’re suing lives or where the business is located.
- If your case involves a contract, you can file at the court nearest to where the contract was signed by the Defendant. You can also file where the contract was to be carried out.

- If your case involves property damage or personal injury, you can file in the court nearest to where the damage or injury occurred.

Based on the above options, there may be more than one court to choose from. If so, choose the court that is most convenient for you. If you will be filing your case in Los Angeles County, you can find a list of Small Claim Court locations here: <http://www.lasuperiorcourt.org/locations/ui/filteredlist.aspx?ct=SM>.

### **Complete the Paperwork**

You will need to complete a document called the *Plaintiff's Claim and Order to Go to Small Claims Court* (SC-100) to start your Small Claims case. This form can be found online on the California Courts website and can be completed electronically. To complete the form online, go to this website: <http://www.courtinfo.ca.gov/selfhelp/smallclaims/fillyourforms.htm>.

### **File the Paperwork in Court**

Once you have completed the paperwork, you need to file your Small Claims Court papers with the court clerk. There are four ways to file court papers at the correct courthouse:

- In person
- By mail
- Online
- By fax

For more information, visit this website: <http://lacountydca.info/tsFileCtPapers.htm>.

### **Filing Fees**

The filing fee is based on the amount of your claim. If you file less than 12 claims in one year the following fees apply:

- \$30 for a claim up to \$1,500
- \$50 for a claim of \$1,500.01 to \$5,000
- \$75 for a claim of \$5,000.01 to \$7,500

If you file more than 12 claims, the fee is \$100 regardless of the amount you are suing for.

### **Serve the Court Papers**

After filing your case, a copy of your Plaintiff's Claim must be delivered to the person or business you are suing. Each person named must be served.

Your claim tells the other party that they are being sued and gives the date, time and place of the hearing. You cannot serve the claim yourself.

There are four ways to serve the claim:

- Have the Sheriff in the courthouse closest to where the Defendant lives or works serve your claim. The fee is \$30.00;
- Hire a Registered Process Server. You can find a list of registered process servers in the telephone book;
- Have a friend or family member over the age of 18 serve your claim. This person cannot be a witness or involved in the case;
- Have the court clerk serve your claim by certified mail. This method is not recommended.

A Proof of Service form must be filed with the clerk's office at least 5 days before the court date. You can file the Proof of Service in one of three ways:

- In person
- By fax (fees apply)
- By mail

**How soon is the court date?**

A court hearing will be scheduled within 20 to 70 days.

**Can the Defendant sue me?**

Yes. The person you are suing can counter-sue you. They may counter-sue you by filing a Defendant's Claim and having a copy served to you.

**Can I change my court date?**

Yes. If you have not served the Defendant you can request to have your court date rescheduled free of charge. If you have served the Defendant you can request a Postponement and pay a \$10 fee. The Request for Postponement should be filed at least 10 days prior to your court hearing.

**WHAT HAPPENS ON THE DAY OF TRIAL?**

On the day of trial, you will be called into the courtroom and the clerk and bailiff will discuss the courtroom procedures. The courtroom is kept silent while cases are being heard and while the clerk or bailiff is speaking. If you wish to speak to the other party to discuss a settlement or any other matter, politely ask them to step outside with you.

Most small claims cases last only 15 to 20 minutes. For this reason, it is best to organize your evidence ahead of time and make brief notes of what you want to say in court.

If you have documents, bring the original and two photocopies. You will keep the original and give one copy to the Judge and the other to the Defendant. Here are some examples of evidence to bring:

- Witnesses to testify on your behalf.
- Receipts or cancelled checks that prove you are owed money.
- Bills or repair estimates.
- Photographs of property damage.
- Written contracts, agreements or other documents that prove your case.

**What if I don't speak English?**

If you do not speak English, bring someone to the court who can interpret for you.

**How do I behave in court?**

Be respectful to the Judge, the Defendant and everyone else in the courtroom. In court, only one person speaks at a time. Do not interrupt others who are speaking. Remember, you are not in court to convince the Judge that the Defendant is a bad person; you are there to prove that you are owed money.

**How do I present my case?**

When the Judge allows you to speak, get right to the point and stick to the facts of your case. Give the Judge copies of your evidence. You can refer to your notes but do not read a prepared statement to the Judge. If the Judge asks you a question, answer it directly. Avoid long statements that do not directly answer the Judge's questions.

**When will the Judge make a decision?**

The Judge can make a decision at the end of the hearing. However, in most cases, the Judge will render his or her decision after some time and you will be notified of this decision by mail.

**What if I win?**

The Judge will award you the money owed and may award your court costs. You must wait 30 days before trying to collect your money. This period of time allows the Defendant to file an Appeal if they appeared at the hearing. If the Defendant did not appear they can file a Motion to Vacate Judgment. After 30 days, you can take action to begin collecting the money awarded to you.

**What if I lose?**

As the Plaintiff, you cannot appeal if you lose on your Plaintiff's Claim. If you are the Defendant, you have 30 days to file an appeal.

**What if I decide I want to go to mediation?**

It's not too late! Most Small Claims Courts will have mediators present on the day of the trial to help you work out a settlement before you have to present your case to the judge.

**What if I miss my court date?**

If you miss your court date, the Judge may dismiss your case without prejudice. If so, you can start over and file your case again as long as you are within the statute of limitations.

**IF I WIN MY CASE, HOW DO I COLLECT MY MONEY?**

If you win your case, the money the court awards you is called the judgment. You are the Judgment Creditor. The person who owes you money is the Judgment Debtor.

If the Judgment Debtor does not pay you within 30 days, there are ways the Sheriff can help you collect your money.

**To collect money, you must first get a Writ of Execution.** A Writ of Execution is an order from the court to the Sheriff that allows the Sheriff to collect money owed to you. You get a Writ of Execution at the court clerk's office. Here are some ways the Sheriff can help collect your money:

- If you know where the Judgment Debtor banks, you can ask the Sheriff to collect money from their account.
- If you know where the Judgment Debtor works, the Sheriff can collect 25% of the debtor's wages each month until your judgment is paid in full.
- If the Judgment Debtor is a business and uses a cash register, you can instruct the Sheriff to do a till tap. This permits the Sheriff make a single trip to the business and take all cash and checks from the cash register. You can also request a keeper. This allows the Sheriff to stay at the business location for eight hours or more and collect all cash and checks received that day.

There are fees for all of these services.

#### **Can I add collection costs and interest to my judgment?**

Yes. You can add your collection costs plus 10% interest per year onto your judgment. To do this, you need to file the form called, *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* with the clerk's office. You have two years from the date you paid to add collection costs to your judgment. You can add interest anytime prior to collection.

#### **What is the time period within which I have to collect?**

You have ten years from the date the judgment was entered to collect your money. If you cannot collect within 10 years, you can renew the judgment for another ten years by filing the forms called *Application For And Renewal of Judgment and Notice of Renewal of Judgment*. You must file these forms with the clerk before the end of the 10-year period. Be sure to send a copy of each form to the Judgment Debtor and file a Proof of Service with the court.

### ADDITIONAL RESOURCES

For further information regarding small claims, please visit:

1. The County of Los Angeles Department of Consumer Affairs provides a Small Claims Advisor Service. This service is available to individuals and businesses suing or being sued in a Los Angeles County Small Claims Court. To find out more information about this service call 213-974-9759 or visit <http://lacountydca.info/tsSCCBranchOffices.html>.
2. The California Courts Self-Help Center's website provides information on the Small Claims process. The website can be found at <http://www.courtinfo.ca.gov/selfhelp/smallclaims/>

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