Information Sheet for Plaintiffs in Small Claims Cases

The person who files a claim in small claims court is called the *plaintiff*. The person the claim is filed against is called the *defendant*. This is a short information sheet for plaintiffs in small claims cases. At the Idaho Supreme Court's website you can get a booklet with more detailed information: http://www.isc.idaho.gov/material.htm#sclaim.

1. Filing Your Claim

You must file your claim in the county where the defendant lives or the county where the claim arose. For example, if your claim is about a car accident, the county where the claim arose is the county where the accident happened.

You can get a claim form from the court clerk in most counties where you are going to file your claim. Check with your local court clerks to see if they have the forms. Fill out the form *completely* (except for the case number), and give it to the court clerk to be filed. You must pay a $69.00 filing fee.

You cannot ask for more than $5,000.00. You cannot avoid the $5,000.00 limit by filing more than one claim against the same defendant about the same transaction or occurrence.

There are laws that put a time limit on filing claims. There are different limits for different types of claims. Many of the time limits are in Idaho Code Title 5, Chapter 2. The court clerk will not be able to tell you the time limit that applies in your case. The judge will decide what time limit applies in your case at the hearing on your claim. Generally, you should file your claim within one year after it arose, but there are many cases in which the time limit is much longer, and a few in which it is shorter.

2. Giving Notice of Your Claim to the Defendant

You must give notice of your claim to the defendant. The procedure for giving notice to the defendant is called *service of process*. If service of process is completed correctly, and the defendant doesn't answer your claim, the judge can give you a *default judgment*. The judge cannot give you a default judgment if service of process is not completed correctly. If there is more than one defendant, you must serve process on *each* defendant. If the defendants are husband and wife, you must serve process on each spouse.

Service of process should be completed within 30 days after you file your claim. In most counties, if you do not complete service of process within 30 days, your claim will be dismissed. If your claim is dismissed for lack of service, you can reopen your case by re-filing your claim. If you reopen your case within six months after you first filed your claim, you won't have to pay another filing fee.

There are two basic ways to serve process: certified mail and personal delivery by a non-party. Service of process is complete when the court clerk receives a certified mail return receipt signed by the defendant, or an Idaho Sheriff's Return of Service or an Affidavit of Service stating when and how the defendant was served.

a. Certified Mail

You can ask the court clerk to serve process on the defendant by certified mail. The court clerk will charge you a fee. The court clerk will mail the papers to the defendant, return receipt requested. If the court clerk does not receive a return receipt signed by the *defendant,* you will have to try a different way to serve process. Service of process by certified mail costs less than the other methods to serve process, but is often not completed because the defendant did not sign the return receipt.

b. Sheriff's Office

In most counties, you can ask the sheriff's office to serve process on the defendant. (Some counties have a marshal's office that will serve process in small claims cases.) You will have to pay a fee, and you will have to provide information on where the defendant can be found. The sheriff's office will not investigate to find the defendant for you.

In some counties, the court clerk will collect the fee for the sheriff, and give the papers to the sheriff's office that are to be served on the defendant. In other counties, the court clerk will give you the papers, and you will have to take the papers to the sheriff's office.

The sheriff's office will prepare a "Sheriff's Return of Service," stating when and how the defendant was served, or that the sheriff was not able to deliver the papers. Some sheriff's offices will file the return with the court clerk, others will give you the return to file with the court clerk.

c. Private Process Server

You can ask a private process server to serve process on the defendant. You can find them in the phone book. You will have to pay a fee, and you will have to provide information on where the defendant can be found. If you don't know where the defendant can be found, some process servers offer investigative services. The process server will charge more to find the defendant for you.

The court clerk will give you the papers to be served on the defendant, and you will have to take them to the process server. Once the process server has delivered the papers to the defendant, the process server will prepare an "Affidavit of Service" stating when and how the defendant was served. If the process server was not able to deliver the papers, the affidavit will say so.

Some process servers will file the affidavit with the court clerk, some will give it to you to file. Service of process is not complete until the affidavit, stating when and how the defendant was served, is filed with the court clerk.

d. Any Person Not a Party and Over 18

You can ask any person who is at least 18 years old and not a party to your case to serve process on the defendant. You can get an Affidavit of Service from the court clerk. The server will complete the Affidavit after serving the defendant. You will have to file the completed Affidavit of Service with the court clerk.

3. If the Defendant Does Not File an Answer - Default Judgments

If the defendant does not file an answer and the court file shows that service of process on the defendant has been completed, in most counties the court clerk will schedule your claim for a *default hearing*. The court clerk will mail you a notice with the date and time of your hearing. In some counties, default judgments are entered based on affidavits. If you are in a county where defaults are entered based on affidavits, you will need to get the proper forms from the court clerk, fill them out completely, and file them with the court clerk. The court clerk will then give your case file to the judge, and the judge will decide whether the information in the file is complete. The court clerk will notify you if your information is not complete. If the information in the file is complete, the judge will give you a default judgment, and the court clerk will mail you a copy of the judgment.

The following four requirements must be met before the judge will give you a default judgment.

a. The judge will check to make sure that the papers are in the court file to show that notice of your claim was properly given to the defendant.

b. There is a federal law that says that default judgments cannot be entered against men and women who are on active duty and unable to respond. You must be able to truthfully state how you know the defendant: is not a member of the uniformed services, that you have made diligent efforts but were not able to find out if the defendant is a member of the uniformed services, or the defendant has waived in writing his/her rights under the federal law. You can seek information about a person's military status for free at: the Defense Manpower Data Center at: (703) 696-6762, or fax (703) 696-4156 or use their website if you have the defendant's social security number https://www.dmdc.osd.mil/scra/owa/home .

c. The judge cannot enter a default judgment against a minor (a person under the age of 18) or someone who is incompetent (is mentally disabled and unable to understand the nature of the proceedings.) You must be able to truthfully state that the defendant is not a minor and is not incompetent.

d. The judge will consider your explanation of your claim, and check any papers you have to support your claim, to verify that your claim has a factual and legal basis.

If these requirements are met, the judge will give you a default judgment. The court clerk will either give you a copy of the judgment at the hearing, or mail one to you after the judge signs the judgment.

4. The Defendant's Answer to Your Claim, and Scheduling the Hearing on Your Claim

If the defendant disagrees with your claim, and wants to contest the claim, the defendant must file an *answer* with the court clerk. When the court clerk receives the defendant's answer, the court clerk will schedule your claim for a *contested claim hearing*. The court clerk will mail you and the defendant a notice with the date and time of your hearing, and the court clerk will include a copy of the defendant's answer with your notice of hearing. In some counties you will be ordered to participate in Small Claims Mediation to see if you can resolve your case before your court hearing.

5. The Hearing on Your Claim - If the Defendant Does File an Answer

At the hearing, the judge will first ask you to explain your case. The judge will then ask the defendant why the defendant disagrees with your claim.

Sometimes the plaintiff and the defendant disagree about the facts of the case. Sometimes one party is not telling the truth. Sometimes both parties are telling the truth as they see it, but they see or remember things differently. When the plaintiff and the defendant disagree about the facts of the case, it is important for you to be prepared to give the judge *evidence* to prove your claim. There are two basic types of evidence - *witness testimony* and *exhibits*.

When you tell the judge about something that happened, you are a witness giving testimony. There may be other people who saw or heard something that happened that is important to your case. There are two ways you can offer what another person has to say at the hearing. One is to have the witness come to the hearing to tell the judge what the witness saw or heard. The other is to have the witness write a statement, and bring the statement to court with you. A witness in court is usually more convincing than a written statement.

If your claim is that you paid the defendant to provide work or services for you, and the defendant did not do it properly, it is likely that you will need a statement or testimony from an *expert witness*. An expert witness is someone who has special training or experience and can give an opinion.

For example, your claim may be that you took your car to the defendant to have it fixed, but the car still isn't running right. You may need someone with training or experience in fixing cars, to tell the judge: a) if the mechanic did what a properly trained and experienced mechanic should have done to diagnose and repair the problem, b) what is wrong with your car now, and c) whether the problem with your car now is the result of something the mechanic did wrong.

Exhibits are things that may help prove your case. The most common types of exhibits are documents and photographs, but an exhibit can be anything that is useful to support your claim.

You should bring any exhibits that may help prove your case. For example:
- If your claim is about a written contract, you should bring all of the contract papers.
- If your claim is about an unpaid account or other debt, you should bring an accounting that shows the amounts owed or charged, the amounts paid, and the current balance.
- If your claim is about damages to property, you should bring photos that show the damage.
- You should bring receipts for any costs or expenses you are asking the defendant to pay.
- If your claim is about property that has been damaged, destroyed, or lost, you should bring estimates or receipts for the cost of repair or replacement.

If your exhibit is a tape recording, you should bring a tape player to the hearing to play the tape. If your exhibit is a VHS video recording, you must call the court clerk's office before the day of your hearing so the court clerk can arrange to have a video player in the courtroom for the hearing.

7. Rescheduling Your Hearing

If there is an urgent reason why you cannot be in court on the day of your hearing, you can make a written request to the judge to reschedule your hearing. The court clerk has a form called a motion to continue that you can use for this purpose. You should file your written request with the court clerk at least two weeks before your hearing.

8. Appearing in Court for Hearings

a. Interpreters. If you or one of your witnesses will need an interpreter at your hearing, you must call the court clerk before the day of your hearing to ask for an interpreter. You do not have to pay for an interpreter. Generally, a friend or relative will not be allowed to interpret for you.

b. Attorneys. You can talk to an attorney before or after your hearing to get information or advice. The attorney cannot appear with you in court.

c. Courtroom Behavior. When you come to court, you should be polite to the judge, the court clerks, and other people in the courtroom, including the defendant. Do not bring children with you unless they are old enough to stay in their seats and sit quietly. While court is in session and you are waiting for your case to be called, do not visit with other people around you. Turn your cell phone or pager off and remove your hat before entering the courtroom. Do not bring food or drink into the courtroom.

9. Settlement

You and the defendant can talk to each other to try to settle the case at any time before the court enters a judgment. Generally, settlement negotiations are confidential - in other words, the judge will not consider anything the parties say to each other during settlement discussions as evidence in the case. The reason for this rule is to encourage the parties to talk to each other openly to try to resolve the case. If you and the defendant reach an agreement, the judge will enter a judgment based on your agreement.

Some counties have started a new program called *mediation*. In mediation, you and the defendant meet with a mediator, who will help you and the defendant to try to settle your case. The mediator does not decide the case - it is up to each party to decide whether they want to agree to a settlement. If the defendant files an answer contesting your claim, the judge in your county may require you to go to mediation. The court clerk will know if mediation is required in your county.

10. Appeals

If the judge enters judgment in favor of the defendant, or if the judge enters judgment in your favor but for less than you asked for, you can file an appeal. If the judge enters judgment in your favor, the defendant can appeal. If you want to appeal the judgment, you must file a *notice of appeal* with the court clerk. The court clerk has a form for you to use. You must file your notice of appeal within 30 days after the judgment is entered. The deadline will not be extended for any reason. You must also pay a $47 filing fee. The court clerk will send you a notice if the defendant files an appeal.

On appeal, the case is assigned to a different judge for a new hearing. The parties may be represented by lawyers. The Idaho Rules of Civil Procedure and Rules of Evidence apply, so the procedures are more formal, and the judge will not allow evidence to be presented that does not comply with the rules.

One of these rules is the hearsay evidence rule that generally excludes out of court statements by non-parties. Although the judge may have accepted hearsay such as written witness statements at your first hearing, you will generally have to bring your witnesses to court to testify at the trial on appeal. There are exceptions. Generally for a judge to allow hearsay evidence the person offering it has to provide information to show the hearsay evidence is reliable.

11. Collecting on Your Judgment

If judgment is entered in your favor, the defendant is required to satisfy the judgment promptly, by paying you the full amount of the judgment. The court does not collect the judgment for you. If the defendant does not pay the judgment, there are ways you can collect on the judgment. You can get a brochure from the court clerk, called “Collecting on Your Small Claims Judgment,” that has more information.

12. Satisfaction of Judgment

If judgment is entered in your favor, and the defendant pays the judgment in full, then the judgment has been satisfied. When the judgment has been satisfied, you must file a *satisfaction of judgment* with the court clerk. The court clerk has a form you can use.

The satisfaction of judgment creates a record that the judgment has been paid. If the satisfaction is not filed, it will affect the defendant’s credit history. If the judgment is satisfied and you do not file a satisfaction of judgment, the defendant may have a claim against you for damages.

13. More Information

If you need more information than is provided in this information sheet or in the on-line booklet, you should talk to a lawyer. *The court clerk cannot give you any information about anything other than small claims mediation that is not already covered in this information sheet and the on-line booklet.*