

INFORMATION FOR DEFENDANTS 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*. Small claims court is an easier, quicker, and cheaper way for people to take their cases to court. But if you disagree with the plaintiff's claim and want to win your case, there are steps you must follow to *contest* the claim. This booklet will take you step-by-step through the small claims process. *It is very important that you read this information carefully.*

The steps you must follow are set by state laws. Some of those laws are based on principles of basic fairness from the Idaho Constitution and the U.S. Constitution. There is more information about the laws that apply in small claims cases at the end of this booklet. The court clerks and the judge in your case are also required to follow those laws, and cannot change them for your case. Although the general steps for small claims cases are set by state law, there are some details in those steps that are set by the judges and the court clerks in the county where the claim is filed, and there are some differences in the steps in different counties.

If you need more information, you should talk to a lawyer. You cannot have a lawyer come with you to the hearing on the claim in your case, but you can talk to a lawyer before and after the hearing to get more information and to get legal advice.

A court clerk can file your papers, can show you other papers that have been filed with the court, can give you information about scheduling hearings and filing fees, and has some standard forms you can use for the papers you will need to file. But court clerks cannot tell you what to write on the forms or the other papers you will need to file, they cannot give you legal advice, and generally they cannot give you any other information that is not covered in this booklet. Some courts also have court assistance officers who can help you, and there is more information later in this booklet about other places you can contact for help or information.

You can talk to the plaintiff before your hearing to try to solve the problem the plaintiff filed the claim about. When you and the plaintiff talk to each other to try to solve the problem, you are trying to *settle* the case. You and the plaintiff can talk to each other to try to settle the case at any time before the court enters a judgment. There is more information about settlement and judgments later in this booklet.

TABLE OF CONTENTS

Page Number

<u>PART A: IF YOU AGREE WITH THE PLAINTIFF'S CLAIM OR IF YOU DO NOT CONTEST THE PLAINTIFF'S CLAIM</u>	1
<u>PART B: IF YOU DISAGREE WITH THE PLAINTIFF'S CLAIM and WANT TO CONTEST THE PLAINTIFF'S CLAIM</u>	3
Step 1: THE CLAIM	3
Step 2: FILING YOUR ANSWER TO THE PLAINTIFF'S CLAIM, AND SCHEDULING THE HEARING ON THE CLAIM	4
Completing the Answer Form	4
Filing Your Answer	5
Notifying the Court Clerk of a Change in Your Address	5
Scheduling the Hearing	5
Rescheduling Your Hearing	6
Step 3: GETTING READY FOR THE HEARING	6
Witness Testimony	6
Exhibits	7
Expert Witnesses	8
Counterclaims	9
Settlement	9
Step 4: AT THE HEARING	10
Interpreters	10
Courtroom Code of Dress and Behavior	10
Attorneys of Other Representatives	10
What happens if you don't come to the hearing? (default judgments)	10
What happens if the plaintiff doesn't come to the hearing?	12
The Roll Call	12
Stipulated Judgments (when you and the plaintiff both come to the hearing and you agree about the plaintiff's claim)	13
Hearings in Contested Cases	13
Paying the Judgment	15
Step 5: APPEALS OF SMALL CLAIMS JUDGMENTS	15
Filing an Appeal	15
Deadline for Filing Your Appeal	16
Fees for Filing an Appeal	16
The Date and Time for the Hearing on Appeal	16
The Hearing on Appeal	16
Step 6: PAYING THE JUDGMENT	17
Step 7: SATISFACTION OF JUDGMENT	17
<u>PART C: MORE INFORMATION</u>	18
Collection on Judgments and Exemptions from Collection	18
Settlement of Claims	19
Laws that Commonly Apply in Small Claims Cases	20
Court Resources and Other Legal Resources	22

PART A: IF YOU AGREE WITH THE PLAINTIFF'S CLAIM, OR IF YOU DO NOT CONTEST THE PLAINTIFF'S CLAIM

Along with the copy of the plaintiff's claim, you were given a *summons* and a form for your *answer* to the claim. On the summons, there is a deadline for you to file an answer with the court. If you disagree with the plaintiff's claim, and want to contest the claim, you must complete the answer form and file it with the court clerk by the deadline in your summons. If you file an answer, the court clerk will schedule a hearing for a contested claim. There is information about contesting a claim later in this booklet, in Part B.

If you agree with the plaintiff's claim, or if you do not want to contest the claim, then you do not need to file the answer. If you do not file an answer, the judge may give the plaintiff a *default judgment*. The default judgment will say that it is *in favor of the plaintiff*. If the plaintiff is asking that you pay the plaintiff money, the judgment will state the amount of money you are to pay. If the plaintiff is asking that you return personal property that belongs to the plaintiff, the judgment will describe the property you are to return. The judgment will include the costs the plaintiff paid to file the claim and the costs the plaintiff paid to give you notice of the claim. The judgment cannot be for more than the plaintiff is asking for (plus the costs the plaintiff paid to file the claim and give you notice of the claim). The court clerk will mail a copy of the judgment to you.

After the judge enters a default judgment, you are required to pay the amount of money stated in the judgment, and return any personal property described in the judgment, *immediately*. Payment should be made directly to the plaintiff, not to the court. You should make the payment in a way that gives you proof that you paid the full amount, that you paid it to the plaintiff, and the date it was paid (such as the cancelled check, or a money order sent by certified mail), and you should keep your proof of payment.

If you do not pay the full amount stated in the judgment (or if you do not return the personal property described in the judgment), there are ways the plaintiff can collect on the judgment.

- The plaintiff can *garnish your wages*. (When your wages are garnished, your employer withholds part of your paycheck and pays the money to the sheriff, who pays it to the plaintiff.)
- The plaintiff can *attach* your bank account(s). (When your bank account is attached, the bank pays the money you have in your account to the sheriff, who pays it to the plaintiff.)
- The plaintiff can have the sheriff seize your personal property, sell it at auction, and give the proceeds to the plaintiff. (Personal property is property other than land or buildings.)
- The plaintiff can file a *lien* against real property, and can *foreclose* on the lien. (Real property is land and buildings; foreclosure is the process of selling the property to pay the judgment lien.)

You can also be ordered to come to court for a *debtor's examination*, so the plaintiff can find out what you have that can be used to pay the judgment. If you do not come to court for the examination, you can be held in contempt, and a warrant can be issued for your arrest.

There is information about the procedures for collecting on small claims judgments, and about the types of money and property that are exempt from collection, later in this booklet, in Part C.

If the judge gives the plaintiff a default judgment, you can ask the judge to *set aside* the default judgment. A request to set aside a judgment should be made within a reasonable time; generally, within 2 weeks after you learned or were given notice that the judgment had been entered. To ask the judge to set aside the judgment, you must file a "Motion to Set Aside Default Judgment" with the court clerk in the county where the claim was filed. The court clerk has a form for you to use for your motion. The motion must be typewritten or printed in black ink. The motion must have the same *caption* as the judgment (the name of the court, the names of the plaintiffs and defendants and the case number). You must explain why you did not file an answer to the plaintiff's claim (or did not file it by the deadline in the summons, if you filed it too late), and sign the motion. You must also complete the answer form, and file both your motion and your answer with the court clerk.

After you file your motion with the court clerk, one of the following three things will happen.

1. The judge may decide that your motion shows that you did not have *good cause* for failing to file an answer to the plaintiff's claim, and deny your motion.
2. The judge may decide that your motion shows that you did have *good cause* for failing to file an answer to the plaintiff's claim, and grant your motion. If the judge grants your motion, the judge will set aside the default judgment, and the court clerk will schedule a hearing on a contested claim. The court clerk will mail you and the plaintiff a notice of the date and time for the hearing on the claim.
3. The judge may schedule a hearing on your motion. The court clerk will mail you and the plaintiff a notice of the date and time for the hearing on your motion. If the judge decides at the hearing on your motion that you had *good cause* for failing to file an answer to the plaintiff's claim, the judge will grant your motion, and set aside the default judgment. If the judge sets the default judgment aside, the judge will go ahead and have the hearing on the claim at that time. So if you receive a notice of a hearing on your motion, you should come to the hearing on your motion, and be prepared to have a hearing on the claim. If the judge schedules a hearing on your motion, and you do not come to the hearing, the judge will deny your motion, and the default judgment will remain in effect.

If the plaintiff had costs from having to attend another hearing, the plaintiff can ask the judge to order you to pay for those costs.

A judge is likely to find *good cause* if the judge is satisfied that you have one of the following reasons for not filing an answer (or for filing an answer too late):

- You were not given proper notice of the claim.
- At the time the default judgment was issued, you were on active duty in the Uniformed Services.
- There was a genuine emergency that prevented you from filing an answer.
- Due to circumstances beyond your control, it was an unreasonable hardship for you to file the answer.

A judge may find good cause for other reasons.

You and the plaintiff can talk to each other to try to settle the plaintiff's claim at any time before the court enters a judgment. There is more information about settlement later in this booklet, in Part B, Step 3, and Part C.

PART B: IF YOU DISAGREE WITH THE PLAINTIFF'S CLAIM, AND WANT TO CONTEST THE PLAINTIFF'S CLAIM

If you disagree with the claim, and want to win your case, there are steps you must follow to *contest* the claim. This part of the booklet will take you step-by-step through the small claims court process.

STEP 1: THE CLAIM

The plaintiff in your case has filed a claim against you in small claims court. To file the claim, the plaintiff had to fill out a claim form and file it with the court clerk. The plaintiff had to pay a fee for filing the claim. The plaintiff was required to give you notice of the claim. The plaintiff may have had to pay a fee to give you notice of the claim. If you lose your case, the judge in your case will require you to pay the plaintiff for the cost of the filing fee and the cost of giving you notice of the claim.

The plaintiff should file the claim in the county where you live or the county where the claim arose. For example, if the claim is about a car accident, then the county where the claim arose is the county where the accident happened.

If the plaintiff files the claim in the wrong county, you can ask the court to transfer the case to another county. To ask the judge to transfer the case to another county, you must file a "Motion and Affidavit to Change Venue" with the court clerk. The court clerk has a form for you to use for your motion. The motion must be typewritten or printed in black ink. Your motion must have the same *caption* as the plaintiff's claim (the name of the court, the names of the plaintiffs and the defendants, and the case number). Fill out the form completely. You should file your motion along with your answer to the plaintiff's claim.

After you file your motion with the court clerk, one of the following three things will happen.

1. The judge may grant the motion, and order the case transferred to another county. If the case is transferred to another county, the court clerk will mail you a notice that your case has been transferred. Your case will then proceed in the county to which the case was transferred.
2. The judge may deny the motion. If the judge denies the motion, your case will remain in the same county where the plaintiff filed the claim, and the court clerk will mail you a notice that your motion was denied.
3. The judge may schedule a hearing on your motion. The court clerk will mail you and the plaintiff a notice of the date and time for the hearing on the motion. At the hearing, the judge will decide whether to grant or deny your motion.

The plaintiff cannot ask for more than \$5,000.00 in small claims court. The plaintiff cannot avoid the \$5,000.00 limit by filing more than one claim about the same *transaction or occurrence*. For example, if the plaintiff is a landlord and the claim is about unpaid rent and damages to rental property, the plaintiff cannot get one judgment for the unpaid rent and another for the damages to the rental property.

The plaintiff can ask for the return of *personal property* that belongs to the plaintiff. Personal property is anything other than land or buildings. The plaintiff cannot ask for the return of property that is worth more than \$5,000.00 in small claims court. But the plaintiff can ask for the return of personal property worth up to \$5,000.00, or to be paid the value of the property up to \$5,000.00.)

The plaintiff can ask for both money you owe and the return of personal property. If the plaintiff is asking for money and the return of personal property, the total cannot be more than \$5,000.00.

There are laws called *statutes of limitations* that put a time limit on filing claims. There are different time limits for different types of claims, and the time limit is extended in some circumstances. Generally, a claim should be filed within one year after it arose, but there are many cases in which the limit is more than one year, and a few cases in which it is less. 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 at the hearing if the claim is within the time limit.

There is more information about the requirements for plaintiffs in a booklet called "Information for Plaintiffs in Small Claims Cases." You can get a copy of the booklet at the Ada County's website www.adaweb.net/cao.

STEP 2: FILING YOUR ANSWER TO THE PLAINTIFF'S CLAIM, AND SCHEDULING THE HEARING ON THE CLAIM

Along with a copy of the plaintiff's claim, you were given a summons and a form for your answer to the claim. On the summons, there is a deadline for you to file an answer with the court. You must complete the answer form and file it with the court clerk by the deadline in the summons.

Completing the Answer Form

The answer form must be filled out with a typewriter or printed in black ink.

The space at the top of the answer form, with blanks for the names of the plaintiffs and defendants, and the case number, is called the *caption*. Enter the names of the plaintiffs, the names of the defendants, and the case number in the caption of the answer form the same way they are shown on the plaintiff's claim.

In the first section of the form, immediately below the caption, there are spaces for the defendant(s) name, address and phone number. If your name is spelled incorrectly on the plaintiff's claim, or if your address or phone number is incorrect or left out on the plaintiff's claim, then write your correct name, address and phone number in these spaces.

If the plaintiff's claim is asking for a judgment for money, fill out the second section of the form. If the plaintiff's claim is asking for the return of personal property, fill out the third section of the form. Fill out the form completely. You must sign the form in front of a notary or a court clerk. If you sign the form in front of a notary, the notary must sign and seal the form.

Filing Your Answer

When you have completed the answer form, you must give it to the court clerk, and the court clerk will file your answer. There is no fee for filing an answer in small claims court. You can file your answer by taking it to the court clerk's office, or by mailing it to the court clerk's office at the address shown on the summons. The answer must be received by the court clerk by the deadline shown on the summons. If you file your answer by mail, you should mail it early enough it will arrive at the court clerk's office before the deadline shown on the summons. If you do not file the answer by the deadline, the judge may give the plaintiff a default judgment against you.

Notifying the Court Clerk of a Change in Your Address

If your mailing address changes, you must notify the court clerk in writing of your new address as soon as possible. The notice does not need to be in any special form -- a letter is sufficient as long as it includes your case number. The court clerk will need to send you notices about your claim, and if you don't give the court clerk written notice of your new address, notice will be complete when it is sent to your old address. You should also notify the court clerk in writing if your telephone number changes.

Scheduling the Hearing

When the court clerk receives your answer, the court clerk will schedule your claim for a "contested claim" hearing. This hearing is when you and the plaintiff come to court to tell the judge about your case. If you disagree with the plaintiff's claim, and want to contest the claim, you must come to the hearing. There is more information about how to prepare for the hearing, and what will happen at the hearing, later in this booklet under Steps 3 and 4. If you do not come to the hearing, the judge may give the plaintiff a *default judgment* against you.

The court clerk will mail you and the plaintiff notice with the date and time for the hearing. Generally, the court clerk will try to schedule the hearing for a date within 30 days after you file your answer, but the time may be longer if the court has a backlog of pending small claims cases.

Rescheduling Your Hearing

If there is an urgent reason why you cannot come to court when your hearing is scheduled, you can ask the judge to reschedule the hearing. To change the date of your hearing, you must file a "Motion to Continue Hearing" with the court clerk. The court clerk has a form you can use for your motion. The motion must be typewritten

or printed in black ink. Your motion must have the same *caption* as the plaintiff's claim (the name of the court, the names of the plaintiffs and defendants, and the case number). You must explain why you cannot come to court when your hearing is scheduled, and sign the form. When you file your motion, the court clerk will give it to the judge, and the judge will decide whether or not to reschedule the hearing. If the judge *grants your motion* (decides to change the date of your hearing), the court clerk will mail you and the plaintiff a notice with the new date and time for the hearing.

Your motion must be filed before your hearing. The deadline for filing the motion varies depending on the county. You can ask the court clerk what the deadline is for your county. If there is no deadline, it is best if you file your motion at least two weeks before the hearing. This will allow time for the judge to consider your motion, and if the judge grants your motion, it will allow time for the court clerk to notify the plaintiff of the schedule change before the hearing.

STEP 3: GETTING READY FOR THE HEARING

At the hearing, the judge will ask the plaintiff to explain why you should pay the money the plaintiff is asking for, or why you should return the personal property the plaintiff is asking for. The judge will also ask the plaintiff to explain the reasons for the amount of money the plaintiff is asking for. The judge will ask you to explain why you disagree with the 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 things or remember things differently. When the plaintiff and defendant disagree about the facts of the case, it is important for you to be prepared to give the judge *evidence* to support your side of the case. There are two basic types of evidence -- *witness testimony*, and *exhibits*.

Witness Testimony

One type of evidence is *witness testimony*. 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. For example, if the claim is about a car accident, someone who saw the accident may be an important witness. If the claim is about a verbal agreement, and someone heard you and the plaintiff making the agreement, that person may be an important witness.

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. Another is to have the witness write a statement, and bring the statement to the hearing with you. It is usually better to have the witness come to the hearing. A witness in court can be more convincing, because the judge can ask the witness questions, and also because the witness has to stand up in court and promise to tell the truth.

If your witness lives a long way away, you can ask the judge to allow the witness to testify by telephone. If you want to ask the judge to allow a witness to testify by telephone, you must make your request in writing, explaining the reasons for your request, and file it with the court clerk at least 2 weeks before your hearing. The request does not have to be in any particular form, but it must include your case number. The court clerk will notify you before your hearing whether the judge granted your request, and whether there are any special instructions for you or your witness.

You can ask the court to order a witness to come to the hearing. An order that tells a witness to come to the hearing is called a *subpoena* (pronounced suh-pee-nuh). You must ask the court clerk for a subpoena form, and fill out the form. After you have filled out the form, the court clerk will issue the subpoena.

The subpoena must be *served* on the witness. The subpoena is served by delivering the subpoena to the witness in person. The subpoena can be served by the sheriff's office, by a private process server, or by any person at least 18 years old who is not a *party* to your case. (The person who is going to serve the papers cannot be the plaintiff or defendant in your case, and cannot be an employee of the plaintiff or defendant.) Private process servers can be found in the phone book. The sheriff's office or a private process server will charge you a fee to serve the subpoena. The sheriff's office or a private process server will ask you for any information you have that describes the witness or where the witness can be found. The sheriff's office will not search to find the witness for you. If you do not know where the witness can be found, some private process servers offer investigative services. A private process server will charge you more to find the witness for you.

If the sheriff's office serves the subpoena, the sheriff's office will file a return of service with the court clerk, stating whether the sheriff was able to serve the subpoena on the witness, and if so, how the witness was served. If someone else serves the subpoena on the witness, the process server will need to file an "Affidavit of Service" with the court clerk before the hearing. In some counties the process server can get a form from the court clerk. The affidavit must be typewritten or printed in black ink. It must have the same *caption* as the claim (the name of the court, the names of the plaintiffs and defendants and the case number.) It must say whether the process server was able to serve the subpoena on the witness, and if so, when and how the witness was served. The affidavit must be signed in front of a notary, and the notary must sign and seal the affidavit. (In some counties, there is a notary at the courthouse.)

The witness may require you to pay a witness fee of \$20.00 plus their mileage at \$3.0 per mile one way from their residence to the courthouse. If the witness is properly served and does not come to the hearing, the witness can be held in contempt and the judge can order the witness to pay a fine and/or go to jail.

Exhibits

Exhibits are another type of evidence. 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 show the judge what happened in your case. You should bring any exhibits that may help prove your case to the hearing.

There are some types of exhibits that can be especially important in some kinds of cases.

If your case is about a written agreement (called a *contract*), you should bring all of the contract papers.

If the plaintiff claims that you failed to pay money that you owed, and if you paid the money that was owed, you should bring your receipts or canceled checks.

If there is an issue in your case about the condition of property, photographs of the property can be very useful. If there is an issue in your case about the cost or value of property or repairs to property, estimates and receipts can be very useful.

If your case is about a car accident, it is useful to have a diagram or drawing of the area where the accident occurred, to show the streets, the location of any traffic signs or lights, and the location and direction of the cars. You can bring a diagram with you, or the courtroom will have a drawing board where you can draw a diagram for the judge. If police were called to the accident, a copy of the police officer's report may be useful. You may also want the officer to come to the hearing to testify as a witness.

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 should call the court clerk's office before the day of your hearing to let the clerk know you are bringing a video, and the court clerk will have a video player in the courtroom at your hearing.

Expert Witnesses

If there is an issue in your case about whether services were properly rendered, 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. You may need an expert witness to review the facts of your case, to tell the judge if the plaintiff's work met the minimum standards of that trade or profession, and to tell the judge if the failure to meet those standards caused your problems.

For example, the plaintiff's claim may be that you failed to pay for repairs to your car. Your position may be that your car wasn't running right, you took it to the plaintiff to fix it, and it still isn't running right. Your judge may or may not know anything about fixing cars – how to figure out what needs to be fixed, and how to fix it. You may need someone with training or experience in fixing cars who can tell the judge if the plaintiff did what a properly trained and experienced mechanic should have done to figure out what the problem was and to fix the problem, and if the problem with your car now is because of something the plaintiff did wrong or because of some new problem.

Counterclaims

If you have a claim that the plaintiff owes you money, or that the plaintiff has property that belongs to you, your claim is a *counterclaim*. If you want the judge to consider your counterclaim, you must file your own claim against the plaintiff.

For example, a plaintiff might file a claim saying that the plaintiff loaned you \$1000.00 that you didn't pay back. Your defense might be that you only owe the plaintiff \$500.00, because there was another time when you loaned the plaintiff \$500.00 that the plaintiff didn't pay back. The judge won't consider your claim about the \$500.00 loan to the plaintiff unless you file a claim against the plaintiff.

You can file a *claim* in small claims court for up to \$5,000.00, or for the return of personal property worth up to \$5,000.00. If your claim is more than \$5,000.00, up to \$10,000, you must file a *complaint* in the magistrate division of district court. (You can file a complaint for a claim up to \$5,000.00 in the magistrate division of the district court, instead of filing a claim in small claims court.) If your claim is for more than \$10,000, you must file a complaint in district court.

The court clerk can provide you with information about filing a claim in small claims court. If you need information about filing a complaint in district court, or in the magistrate division of district court, you should talk to a lawyer.

If you file a claim against the plaintiff in small claims court, and if you file it before the hearing on the plaintiff's claim, the court can set both claims for hearing at the same time. If the plaintiff's claim and your claim are set for different times, and you want them both heard at the same time, you can ask the judge to reschedule one or both of the hearings. There is information about the steps you must follow to ask the judge to reschedule a hearing earlier in this part of the booklet, under Step 2.

If you file a complaint against the plaintiff in district court (or in the magistrate division of district court), at the hearing on the plaintiff's claim either you or the plaintiff can ask the judge to send the plaintiff's claim to district court (or the magistrate division of the district court) to be heard at the same time as your complaint.

Settlement

You and the plaintiff can talk to each other to try to settle your case at any time before the court enters a judgment. Often, each party is more willing to try to resolve the case than the other party expects, so it is often worthwhile to try to settle the case even if you don't think the plaintiff is interested in settlement.

Generally, settlement negotiations are confidential - in other words, the judge generally will not consider anything the parties say as part of 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 their case.

STEP 4: AT THE HEARING

Interpreters

If you or one of your witnesses will need an interpreter at the hearing, you must ask the court clerk to get one for you. You must tell the court clerk your case number, and the language for which you need an interpreter. You do not have to pay for an interpreter. Generally, a friend or relative will not be allowed to interpret for you or your witnesses.

The deadline to ask for an interpreter varies depending on the county and the language for which you need an interpreter. You can ask the court clerk what the deadline is in your county. If there is no deadline, it is best if you ask the court clerk for an interpreter at least two weeks before your hearing.

Many counties do *not* have full-time Spanish-language interpreters. In counties that do have full-time Spanish-language interpreters, the interpreters are usually busy with cases for which they were scheduled ahead of time. If you need a Spanish-language interpreter, you *must* request one *before* your hearing, as described above.

Courtroom Code of Dress and Behavior

When you come to court for your hearing, you should dress neatly and cleanly -- the way you would for any important occasion. 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. You cannot take pictures or make a tape recording at the hearing, unless you have the judge's permission.

Attorneys or Other Representatives

When you come to the hearing to talk to the judge, you are *appearing* in court. You cannot have a lawyer appear with you or for you at the hearing, but you can talk to one before or after your hearing to get more information and legal advice. You cannot have a friend or relative appear in court instead of you, but you can bring friends or relatives as witnesses, and friends or relatives can come to court to watch the hearing. A business organization can appear in court through an owner, or through an employee so long as the employee is not an attorney.

What happens if you don't come to the hearing? (default judgments)

If you do not appear at the hearing, the judge may give the plaintiff a *default judgment*. The default judgment will say that it is *in favor of the plaintiff*. If the plaintiff is asking that you pay the plaintiff money, the judgment will state the amount of money you are to pay. If the plaintiff is asking that you return personal property that belongs to the plaintiff, the judgment will describe the property you are to return. The judgment will include the costs the plaintiff paid to file the claim and to give you notice of the claim. The judgment cannot be for more than the plaintiff is asking for (plus the costs the plaintiff paid to file the claim and give you notice of the claim). The court clerk will mail a copy of the judgment to you. There is more information about default judgments earlier in this booklet, in Part A.

If the judge gives the plaintiff a default judgment, you can ask the judge to *set aside* the default judgment. A request to set aside a judgment should be made within a reasonable time; generally, within 2 weeks after you learned or were given notice that the judgment had been entered. To ask the judge to set aside the judgment, you

must file a “Motion to Set Aside Default Judgment” with the court clerk in the county where the claim was filed. The court clerk has a form for you to use for your motion. The motion must be typewritten or printed in black ink. The motion must have the same *caption* as the judgment (the name of the court, the names of the plaintiffs and defendants and the case number). You must explain why you did not come to the hearing on the claim, and sign the motion.

After you file your motion with the court clerk, one of the following three things will happen.

1. The judge may decide that your motion shows that you did not have *good cause* for failing to appear at the hearing on the claim, and deny your motion.
2. The judge may decide that your motion shows that you did have *good cause* for failing to appear at the hearing on the claim, and grant your motion. If the judge grants your motion, the judge will set aside the default judgment, and the court clerk will schedule a new hearing on the claim. The court clerk will mail you and the plaintiff a notice of the date and time for the new hearing on the claim.
3. The judge may schedule a hearing on your motion. The court clerk will mail you and the plaintiff a notice of the date and time for the hearing on your motion. If the judge decides at the hearing on your motion that you had *good cause* for failing to file an answer to the plaintiff’s claim, the judge will grant your motion, and set aside the default judgment. If the judge sets the default judgment aside, the judge will go ahead and have the hearing on the claim at that time. So if you receive a notice of a hearing on your motion, you should come to the hearing on your motion, and be prepared to have a hearing on the claim. If the judge schedules a hearing on your motion, and you do not come to the hearing, the judge will deny your motion, and the default judgment will remain in effect.

If the plaintiff had costs from having to attend another hearing, the plaintiff can ask the judge to order you to pay for those costs.

A judge is likely to find *good cause* if the judge is satisfied that you have one of the following reasons for failing to appear at the hearing:

- You were not given proper notice of the claim.
- At the time the default judgment was issued, you were on active duty in the Uniformed Services.
- There was a genuine emergency that prevented you from coming to the hearing.
- Due to circumstances beyond your control, it was an unreasonable hardship for you to come to the hearing.

A judge may find good cause for other reasons.

What happens if the plaintiff doesn’t come to the hearing?

If neither you nor the plaintiff come to the hearing, the judge will dismiss the claim *without prejudice*. If the claim is dismissed without prejudice, the plaintiff can refile the claim later.

If you come to the hearing but the plaintiff doesn’t, the judge will dismiss the claim *with prejudice*. If the claim is dismissed with prejudice, the plaintiff cannot refile the claim later.

If the claim is dismissed with prejudice, the plaintiff can ask the judge to *set aside* the dismissal. To ask the judge to set aside the dismissal, the plaintiff must file a “Motion to Set Aside Dismissal With Prejudice” with the court clerk. The motion must be filed within a reasonable time; usually within two weeks after the judgment was entered.

If the plaintiff files a motion to set aside the dismissal, one of the following three things will happen.

1. The judge may decide that the motion shows that the plaintiff did not have good cause for failing to appear at the hearing on the claim, and deny the motion.
2. The judge may decide that the motion shows that the plaintiff did have good cause for failing to appear at the hearing on the claim, and grant the motion. If the judge grants the motion, the judge will set aside the dismissal, and the court clerk will schedule a new hearing on the claim. The court clerk will mail you and the plaintiff a notice of the date and time for the new hearing on the claim.
3. The judge may schedule a hearing on the plaintiff’s motion. The court clerk will mail you and the plaintiff a notice of the date and time for the hearing on the motion. If the judge decides at the hearing on the motion that the plaintiff had good cause for failing to appear at the hearing on the claim, the judge will grant the plaintiff’s motion, and set aside the dismissal. If the judge sets the dismissal aside, the judge will go ahead and have the hearing on the claim at that time. So if you receive a notice of a hearing on a motion to set aside the dismissal, you need to come to the hearing on the motion, and be prepared to have a hearing on the claim.

If you had costs from having to attend a second hearing, you can ask the judge to order the plaintiff to pay you for those costs.

The Roll Call

When you come to the courtroom for your hearing, there will probably be several other small claims cases scheduled at the same time. The first thing the judge will do is call the roll of cases, to find out which parties are present (the plaintiff and defendant are the *parties* to a case), and which cases are *contested* (the case is contested when both parties are present and they do not agree about the plaintiff’s claim).

After the judge calls the roll of cases, the judge will usually do the *uncontested* cases first. The uncontested cases are the ones where the plaintiff did not *appear* (did not come to the hearing), where the defendant did not appear, or where both parties appeared but the plaintiff and defendant agree about the plaintiff’s claim.

Stipulated Judgments (when you and the plaintiff both come to the hearing and you both agree about the claim)

If you and the plaintiff both come to the hearing, and you both agree about the plaintiff's claim, the judge will enter a judgment based on your agreement. (The agreement is called a *stipulation* or a *settlement*, and a judgment entered based on your agreement is called a *stipulated judgment*.)

- If you have agreed to settle *out of court* (if you and the plaintiff have agreed to solve things between yourselves and don't need a judgment from the court), the judge will dismiss the plaintiff's claim.
- If you and the plaintiff have agreed that there are things one or both of you will do later that will resolve the claim, you should put your agreement in writing, and you should both sign and date the agreement. The judge will dismiss the claim *without prejudice*, which means that the plaintiff can refile the claim if you don't do what you and the plaintiff have agreed.
- If you and the plaintiff agree that the plaintiff is not entitled to a judgment, the judge will dismiss the claim *with prejudice*, which means that the plaintiff cannot refile the claim later.
- If you and the plaintiff agree that the plaintiff is entitled to a judgment, and if you agree about the amount of money you should pay the plaintiff, (or if the plaintiff is asking for the return of personal property, and you agree about the personal property you are to return to the plaintiff), then the judge will fill out a form called a *judgment*. The judgment will say that it is *in favor of the plaintiff*. It will state the amount of money you are to pay the plaintiff (and any personal property that you are to return to the plaintiff), and it will be signed and dated by the judge.

The court clerk will either give you and the plaintiff a copy of the judgment while you are at the hearing, or mail one to you and the plaintiff after the hearing.

Hearings in Contested Cases

After the judge has done the uncontested cases, the judge will start the hearings on the contested cases. When your case is called, you and your witnesses will go to the table marked as the defendant's table. The plaintiff and the plaintiff's witnesses will go to the table marked as the plaintiff's table.

The judge will ask the plaintiff and the defendant (called the *parties*) and their witnesses to be sworn to tell the truth. The parties and their witnesses will stand, raise their right hands, and the judge or the court clerk will ask if each one swears or affirms that the testimony they are about to give is the truth, the whole truth, and nothing but the truth.

The judge will ask the plaintiff to explain the plaintiff's claim. The judge will also ask the plaintiff to explain the reasons for the amount of money the plaintiff is asking for. After the plaintiff explains the plaintiff's side of the case, the judge will ask you to explain why you disagree with the claim. After the judge hears your side of the case, the judge may ask the plaintiff if there is anything else the plaintiff would like to say.

While you are explaining your side of the case, the judge is likely to interrupt you with questions. If the judge interrupts you, the judge is asking questions to guide you to the information that is *relevant* to showing that the plaintiff has not proven the *elements* of a claim, or is relevant to showing the *elements* of a *defense* to a claim, and to avoid wasting time with information that is not relevant.

For example, if the claim is about a contract, the judge will be looking for information that tells the judge if there was an agreement, what the terms of the agreement were, if the defendant failed to do what the parties agreed (*breached* the contract), if the breach caused damages to the plaintiff, and if so, the amount of the damages. It may be a defense to the claim if the plaintiff breached the agreement first.

Some parties want to tell the judge all the reasons they think the other party is a jerk (or worse), but that information is not relevant to what the judge must decide -- which is whether the plaintiff has a legal claim and is entitled to judgment, or whether the defendant has a legal defense to the claim.

While the plaintiff is explaining the plaintiff's side of the case to the judge, you should not interrupt. Also, many judges will not allow you to ask the plaintiff questions. If there is a question you would like to ask the plaintiff, tell the judge the question you would like to ask when you are explaining your side of the case. The judge will either tell you that you can question the plaintiff directly, or the judge may ask the plaintiff the question. Many judges will not allow the parties in small claims cases to question each other, because in many cases the parties will get into an argument with each other, and it won't help the judge get the information the judge needs to make a decision.

If you have any papers, photographs, or other exhibits that you want the judge to look at, you should give them to the court clerk when the judge calls your case. When the judge is done asking questions, the judge will either give your exhibits back to you, or the judge will keep them in the court file. If the judge gives them back to you, you should keep them in case either party files an appeal. If the judge keeps your exhibits in the file, you can ask the court clerk to give them back to you later. In some counties, the court clerk will give them back to you after the judge makes a decision. In some counties, the court clerk will give them back to you after the time for appeal is over.

If possible, the judge will decide your case at the hearing. After the judge has listened to both sides and is ready to make a decision, the judge will tell you what the decision is, and will briefly explain the reasons for the decision. Once the judge tells you the judge is ready to make a decision, the judge will not listen to any argument about the decision.

After the judge has listened to both sides, the judge may need more time to make a decision. The judge may need time to research a legal issue or to look at the parties' exhibits, or the judge may just need time to think about it. If the judge needs more time to make a decision, the judge will take the case *under advisement*. Usually, when a judge takes a case under advisement, the judge will make a decision within a week or two after the hearing.

When the judge has made a decision, the judge will fill out a form called a *judgment*. If the judge decides that you should pay the plaintiff money, or that you should return personal property to the plaintiff, the judgment will say that judgment is entered *in favor of the plaintiff*. If the judge decides that you should pay the plaintiff money, the judgment will state the amount of money you are to pay. If the judge decides that you should return personal property to the plaintiff, the judgment will describe the personal property that you are to return. If the judgment is in favor of the

plaintiff, the judgment will also require you to pay the plaintiff for the cost of the filing fee the plaintiff paid to file the claim, and the cost the plaintiff paid to give you notice the claim, and the judgment will state the amount of money you are to pay the plaintiff for those costs.

If the judge decides that you should not pay the plaintiff money or return personal property, the judgment will say that judgment is entered *in favor of the defendant*.

The court clerk will either give you and the plaintiff a copy of the judgment before you leave the courthouse, or mail one to you and the plaintiff after the hearing.

In some counties, the court clerk makes a tape recording of small claims hearings, but the tapes are usually not kept for a long time. If you want a copy of the tape of your hearing, you can ask for one at the court clerk's office. You must pay a fee for a copy of the tape, and you must pay the fee before the court clerk will make a copy of the tape.

If you disagree with the judgment, you can file an *appeal*. There is information about appeals later in this part of the booklet, in Step 5.

Paying the Judgment

There is information about paying the judgment later in this booklet, in Step 6.

STEP 5: APPEALS OF SMALL CLAIMS JUDGMENTS

Filing An Appeal

If the judge enters judgment in favor of plaintiff, you can file an appeal. If the judge enters judgment in your favor, or if the judge enters judgment in favor of the plaintiff for less than the plaintiff asked for, the plaintiff can file an appeal. There is more information about judgments earlier in this part of the booklet, in Step 4.

If you want to appeal the judgment, you must ask the court clerk for a form called "Notice of Appeal." The form must be filled out with a typewriter or printed in black ink. Fill out the form completely, and sign the form. You must give the completed form to the court clerk, and the court clerk will file your notice of appeal.

The court clerk will schedule a hearing on your appeal, and mail a notice to you and the plaintiff with the date and time for the hearing on your appeal.

Deadline For Filing Your Appeal

You must file your notice of appeal within 30 days (including weekends and holidays) after the date your judgment was filed. The date the judgment was filed is shown in the upper-right hand corner of your judgment. The 30-day deadline for filing an appeal is absolute; you cannot get an extension of the deadline for any reason.

Fees for Filing An Appeal

When you file your notice of appeal, you must pay a \$61 filing fee. In some counties, the filing fee must be paid in cash or money order; in some counties the court clerk will accept a personal check. The filing fee is *non-refundable*; the court clerk will not give it back to you for any reason.

The Date and Time for the Hearing on Appeal

If an appeal is filed, the court clerk will send you and the plaintiff a notice with the date and time of the hearing on appeal. If both parties appeal, both appeals will be set for hearing at the same time.

The Hearing on Appeal

On appeal, the case will be assigned to a different judge for a new hearing. At the hearing on appeal, the judge will not be deciding if the first judge made a mistake. Instead, the case will be treated like a new case, and it will be treated like any other case filed in the magistrate division of the district court.

There is information earlier in this part of the booklet (in Step 4) about interpreters, the courtroom code of dress and behavior, what happens if you don't come to the hearing or the plaintiff doesn't come to the hearing, and stipulated judgments. That same information applies to the hearing on appeal. Also, you and the plaintiff can talk to each other to try to settle the appeal any time before the court enters a judgment. There is information about settlement later in this booklet, Part C.

There are important differences between the first hearing on the claim, and the hearing on appeal. One important difference is that the Idaho Rules of Civil Procedure and the Rules of Evidence apply at the hearing on appeal. These rules have been adopted by the Idaho Supreme Court, and they set the procedures that the judges, court clerks, and parties must follow. The first hearing on the claim in your case was informal, and these rules did not apply. These rules do apply at the hearing on appeal, so the hearing on appeal is more formal. (There is information later in Part C of this booklet about where you can find copies of the Rules of Civil Procedure and the Rules of Evidence.)

Another important difference is that the parties may be represented by lawyers. You may choose to represent yourself at the hearing on appeal. However, when you represent yourself in a case where you can have an attorney, you are held to the same standards as an attorney. In other words, if you choose to represent yourself, it is no excuse that you are not a lawyer or that you don't know the law or the rules.

One of the these rules is the *hearsay evidence* rule that generally excludes out of court statements by non-parties. When you tell the judge something that someone other than the plaintiff told you, that is *hearsay*. When someone other than the plaintiff says something in writing, and you give the written statement to the judge, that is

hearsay. Generally, hearsay evidence is not allowed in hearings on appeal. There are some exceptions when a judge can allow hearsay evidence. Usually, for a judge to allow hearsay evidence, the person offering it has to provide other information to convince the judge the hearsay evidence is reliable.

There are other rules that may be important in your case, depending on the facts and circumstances of your case and the county in which your claim is filed. In some counties, the judges issue pretrial orders that require the parties to follow certain steps in a small claims appeal. If the judge in your case issues a pretrial order, the court clerk will mail both you and the defendant a copy, and you must comply with the order in preparing for your case and presenting your case to the judge.

After the judge has heard your case, the judge will make a written decision, and the court clerk will mail a copy of the decision to you and the plaintiff.

Either you or the plaintiff can ask for a jury trial on an appeal of a small claims judgment. If you want a jury trial, there are steps you must follow that are set forth in the Rules of Civil Procedure. A judgment in a small claims appeal can also be appealed to the district court, and the judgment of the district court can be appealed to the Idaho Supreme Court.

STEP 6: PAYING THE JUDGMENT

If the judge enters judgment in favor of the plaintiff, you are required to pay the amount of money stated in the judgment, and return any personal property described in the judgment, *immediately*. Payment should be made directly to the plaintiff, not to the court. You should make the payment in a way that gives you proof you paid the full amount, that you paid it to the plaintiff, and the date it was paid (such as the cancelled check, or a copy of a money order sent by certified mail), and you should keep your proof of payment.

If the plaintiff does not receive full payment within 30 days (including the return of any personal property described in the judgment), there are ways the plaintiff can collect on the judgment. There is more information about the procedures for collecting on small claims judgments later in Part C of this booklet.

STEP 7: SATISFACTION OF JUDGMENT

After you pay the plaintiff the money stated in the judgment, and return any personal property described in the judgment, the judgment is *satisfied*. After you have satisfied the judgment, the plaintiff must file a *satisfaction of judgment* with the court clerk.

If you satisfy the judgment and the plaintiff does not file a satisfaction of judgment, you may have a claim against the plaintiff for any damages you incur because the plaintiff fails to file the satisfaction of judgment.

PART C: MORE INFORMATION

Collection on Judgments, and Exemptions from Collection

If the plaintiff receives a judgment in the plaintiff's favor, and does not receive full payment (including the return of any personal property described in the judgment), there are ways the plaintiff can collect on the judgment - also known as *execution on the judgment*. If the judgment was a default judgment, the plaintiff can execute on the judgment immediately after the judgment is entered. (There is information about default judgments earlier in this booklet, in Part A.) If the judgment is not a default judgment, the plaintiff must wait until the 30-day appeal period is over. If no appeal is filed, the plaintiff can execute on the judgment immediately after the appeal period is over. If an appeal is filed, the plaintiff cannot execute on the judgment that was issued in small claims court -- but if the plaintiff gets a judgment in the plaintiff's favor on appeal, the plaintiff can execute on the judgment on appeal.

The most common ways for a plaintiff to execute on a judgment include *garnishing wages*, or *attaching personal property*. If your wages are garnished, your employer keeps part of your paycheck and gives the money to the sheriff, who gives it to the plaintiff. Personal property is any property other than land or buildings. If the plaintiff attaches your bank account(s), the bank pays the money you have in your account to the sheriff, who pays it to the plaintiff. If the plaintiff attaches other personal property, like a car, the county sheriff will seize the property, the property can be sold at auction, and the sheriff gives the proceeds of the sale to the plaintiff. There is more information about garnishment and attachment later in this section.

The plaintiff can also file a *judgment lien* against real property, and can *foreclose* on the lien. Real property is land and buildings; foreclosure is the process of selling the property to pay the judgment lien. The procedures for liens and foreclosures are too complicated to briefly explain them in this booklet. If a lien is filed against your real property, you should talk to a lawyer to get more information.

If the plaintiff executes on the judgment by garnishing your wages or attaching your personal property, the sheriff will serve you with copies of the plaintiff's execution papers. *If the sheriff serves you with execution papers, you can avoid having your wages garnished or your property seized by paying the sheriff the amount of money you owe*. The amount of money you owe will include any fees the plaintiff paid the court clerk or the sheriff to execute on the judgment. You may also be required to pay interest on the amount of the judgment from the date the judgment was entered. These additional amounts will be stated on the execution papers.

The sheriff will also serve you with a notice that contains important information about your legal rights. There are some types of money or property that are *exempt*, and can't be taken to satisfy the judgment. The legal notice has more information about the types of money or property that are exempt. If exempt money or property is

garnished or attached, there are steps you must follow to file a "Claim of Exemption" with the sheriff. The legal notice has more information about how to file a claim of exemption.

After you file your claim of exemption with the sheriff, the sheriff will give notice of your claim of exemption to the plaintiff. If the plaintiff disagrees with your claim of exemption, the plaintiff must file a "Motion Contesting Claim of Exemption" with the court clerk. The court clerk will mail you a notice of the date and time for the hearing on the motion. At the hearing on the motion, you should bring whatever papers you have to support your claim of exemption. If the plaintiff does not file a Motion Contesting Claim of exemption, or if the judge decides at the hearing on the plaintiff's motion that the property is exempt, the sheriff will return the property to you. If you do not come to the hearing, or if the judge decides at the hearing that the property is not exempt, the judge will deny your claim, and the sheriff will not return the property.

If someone else has an interest in the property taken by the sheriff (if someone is an owner of the property or has a lien on the property), that person may file a "Third Party Claim" in the same manner that the defendant can file a Claim of Exemption. The proceedings on a Third Party Claim are the same as the proceedings on a claim of exemption.

You can also be ordered to come to court for a *debtor's examination*, so the plaintiff can find out what you have that can be used to satisfy the judgment. If you do not come to the examination, you can be held in contempt, and a warrant can be issued for your arrest.

After you have read the papers the sheriff gives you, if you need more information you should talk to a lawyer. Neither the court clerks nor the sheriff's office can give you legal advice.

Settlement of Claims

You and the plaintiff can talk to each other to try to solve the problem the plaintiff filed the claim about. When you and the plaintiff talk to each other to try to solve the problem, you are trying to *settle* the case. If you come to an agreement, it is called a *settlement*, or *stipulation*. When the judge enters a judgment based on your agreement, it is called a *stipulated judgment*.

You and the plaintiff can talk to each other to try to settle your case at any time before the judge enters a judgment. Often, each party is more willing to try to resolve the case than the other party expects, so it is often worthwhile to try to settle the case even if you don't think the plaintiff is interested in settlement.

Generally, settlement negotiations are confidential -- in other words, the judge generally will not consider anything the parties say as part of 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.

When you come to the courtroom for your hearing, there will be several other small claims cases scheduled at the same time. The judge will usually do the

uncontested cases first. The uncontested cases are the cases where the plaintiff did not come to the hearing, where the defendant did not come to the hearing, or where the plaintiff and defendant have already talked to each other and solved the problem.

Some counties have started a new program called *mediation*. In mediation, you and the defendant will meet with a *mediator*, a person who will help you and the defendant try to settle your case. The mediator is like a judge, because the mediator is *neutral* -- the mediator is not on plaintiff's side or the defendant's side. The mediator is different from a judge, because the mediator does not decide the case -- the mediator tries to help both parties come to an agreement, and it is up to each party to make their own decision about whether they want to agree to a settlement.

Experience has shown that mediation helps to reduce the amount of conflict between the parties and to settle cases -- by helping the parties to exchange important information, to sort out misunderstandings, and to solve problems. It can be especially useful in cases between family members, neighbors, and other people who are likely to continue to have contact with each other after the case goes to court.

The judge in your county may require you to go to mediation. If mediation is required in your county, the court clerk can provide you with more information about how the mediation process works.

You and the plaintiff can agree to use mediation. The Idaho Supreme Court has a list of mediators that have been approved for use in court-ordered mediation. You can also call the Idaho Mediation Association to find mediators in your area. If your dispute is with a business that belongs to the Better Business Bureau, you can contact the BBB about mediation for your dispute.

Laws that Commonly Apply in Small Claims Cases

State statutes are enacted by the Idaho Legislature and signed by the Governor of Idaho. State statutes are published in the Idaho Code. The Idaho Supreme Court has adopted rules that apply to all civil cases, including both small claims and other cases filed in the district courts, or the magistrate division of the district courts. The rules are published in the Idaho Court Rules. Federal statutes are enacted by the U.S. Congress and signed by the President of the United States, and are published in the U.S. Code. Copies of state statutes, Idaho Supreme Court Rules, and federal statutes can be found at county law libraries in some county courthouse, on-line, and at many public libraries.

Procedures in Small Claims Court -- There are statutes and rules that apply just to small claims court. They can be found in Rule 81 of the Idaho Rules of Civil Procedure, and Title 1, Chapter 23 of the Idaho Code.

Triple Damages for Bad Checks -- If the claim is about a bad check, there is a state law that allows the plaintiff to claim damages in addition to the amount of the check. The plaintiff can ask for damages of \$100.00, or triple the amount of the check, up to \$500.00. If the plaintiff wants to ask for damages, the plaintiff must send a certified letter to the defendant at the defendant's last known address at least ten days before the plaintiff files the claim. The letter must demand payment for the check. The letter

must say that if the defendant does not pay the check before the plaintiff files a claim in small claims court, a judgment could be entered against the defendant for the amount of the check (stating the amount of the check), the amount of the damages (stating the amount of the damages), and the plaintiff's cost for filing the claim and giving notice of the claim to the defendant. The statute can be found at Idaho Code §1-2301A.

Landlord/Tenant Cases -- The statutes that apply to cases between renters and owners of real property (land and buildings) are found at Title 6, Chapter 3, Idaho Code.

Consumer Protection -- Idaho has adopted a Consumer Protection Act, which can be found at Title 48, Chapter 6, Idaho Code, and there is another related statute at §28-2-302. The Idaho Attorney General has also adopted rules and regulations pursuant to the Consumer Protection Act. There are portions of the Idaho Uniform Commercial Code that apply to warranties in the sale of goods, which can be found at Idaho Code §§28-2-312 to 28-2-318. Copies of the Attorney General's Rules and Regulations can be found at the Idaho Attorney General's Office, at many public libraries, and on the Internet.

Sales of Real Property (land or buildings) -- There is a statute that requires sellers of residential real property to provide some types of information to the buyer. A seller who fails to provide information as required by the statute can be required to pay the buyer for any actual damages that result from the settler's violation of the statute. The statute can be found at Title 55, chapter 25, Idaho Code.

Negligence -- Idaho has a comparative negligence statute that applies in cases where the plaintiff had damages, but the damages were partly the result of the plaintiff's negligence and partly the result of the defendant's negligence. For example, if the plaintiff's claim is about a car accident, and the accident happened in part because you ran a stop sign, and in part because the plaintiff was speeding, then the comparative negligence statute applies. The comparative negligence statute can be found at Idaho Code §6-801.

The comparative negligence statute says that the judge cannot give the plaintiff a judgment in the plaintiff's favor unless the plaintiff shows that you were more negligent than the plaintiff was. If the judge decides that you and the plaintiff were both negligent, but that you were more negligent than the plaintiff was, the judge will give the plaintiff a judgment in the plaintiff's favor, but the judge will reduce the amount you are ordered to pay based on the plaintiff's share of the responsibility for the accident. For example, if the plaintiff's damages were \$1000 for the cost of repairing the plaintiff's car, but the judge decides that the plaintiff was 30% responsible for the accident, the judge will order you to pay 70% of the plaintiff's damages, or \$700.

Bankruptcy -- There is a federal law that says the judge can't enter a judgment in small claims court against a defendant who has filed for bankruptcy while the bankruptcy case is pending. If the defendant is in bankruptcy, the judge will dismiss the claim, and the plaintiff can file the claim in bankruptcy court. You can get more information about bankruptcy proceedings from the U.S. Bankruptcy Court in Boise, Idaho.

Court Resources and Other Legal Resources

Court Assistance Offices: Court assistance offices are designed to link the public to lawyers and other legal services. Court assistance offices are located in selected courthouses throughout the state. You can call the court clerk in your county to find the court assistance office nearest you, or you can check the CAO website at www.courtselfhelp.idaho.gov.

Court Clerks: The phone numbers and addresses of the Court Clerk in each county are published on the Idaho Supreme Court website at www.courtselfhelp.idaho.gov/find-office. You can find the phone numbers and addresses of the court clerk in your area in your local phone book.

Small Claims Forms: The court clerk in each county has forms for small claims court, and small claims forms can be downloaded from the Idaho Supreme Court website.

Idaho State Law Library: Phone (208) 334-3316

Idaho State Bar Lawyer Referral Service P.O. Box 895 Boise, Idaho 83701 Phone (208) 334-4500 Fax (208) 334-4515 Web Page www.state.id.us/isb	Idaho Legal Aid 310 North 5th Boise, Idaho 83701 Phone (208) 345-0106 Fax (208) 342-2561 E-mail ilasboise@mci.net
---	---

Idaho Volunteer Lawyers P.O. Box 895 Boise, Idaho 83701 Phone 1-800-221-3295 Fax (208) 334-4515	University of Idaho Legal Aid Clinic Moscow, Idaho 83822-2321 Phone (208) 885-6541 Fax (208) 885-6541
---	---

Idaho Council on Domestic Violence
P.O. Box 83720
Boise, ID 83720-0036
Phone (208) 334-6512
Fax: (208) 332-7353
E-mail cheady@icdv.state.id.us

Small Claims Defendants Booklet – July 2012