INFORMATION FOR PLAINTIFFS IN SMALL CLAIMS CASES

The person who files a claim in small claims court is called the *plaintiff*. This booklet provides important information for plaintiffs in small claims court. Small claims court is an easier, quicker, and cheaper way for you to take your claim to court. But if you want to take your claim to court and win your case, there are steps you must follow. 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 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 the 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 your claim, 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.

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PART A: STEP-BY-STEP GUIDE TO SMALL CLAIMS

STEP 1: FILING YOUR CLAIM

In some counties you get a claim form from the court clerk's office where you will file your claim. You can also find the form online at www.courtselfhelp.idaho.gov. The form must be filled out with a typewriter or printed neatly in **black** ink. Fill out the form completely (except for the case number in the top right corner of the form). You must sign the form in front of a notary or a court clerk. If you sign it in front of a notary, the notary must sign and seal the form.

When you have filled out the claim form, you must give it to the court clerk, and the court clerk will file your claim. When you file your claim, you will have to pay a $69 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.

When you file your claim, the court clerk will fill in the *case number* in the top right corner of the form. The case number is a unique number that identifies your claim, and you should have the case number handy whenever you ask the clerk's office for information about your claim. The court clerk will give you a copy of your claim, with your case number. Keep your copy, because you will need it later.

In some counties, you can file your claim by mail. If you want to file by mail, you should call the court clerk's office in the county where you will be filing your claim to find out if you can file your claim by mail and what you need to do to file it by mail.

The County Where You File Your Claim

The person you are filing your claim against is called the *defendant.* You must file your claim at the county courthouse in the county where the defendant lives or the county where your claim arose. For example, if your claim is about a car accident, then the county where the claim arose is the county where the accident happened.

Completing the Claim Form

You will need to have the following information to fill out your claim form:

- Your name, address and phone number.
- The name and address of the defendant, and if you have it or can get it, the defendant's phone number. If there is more than one defendant, you will need this information for each defendant.

The amount of money you are asking the defendant to pay.

- If you are asking for the defendant to return personal property, a description of the property you are asking for, and the value of the property.
- A short description of the basis for your claim.
  The date your claim arose.

There are some special rules that apply to certain types of cases that affect how you should fill out the claim form. The information below will help you fill out the form.

Name and Address of the Plaintiff

You must be at least 18 years old to file a claim in small claims court. You must also be the *true owner* of the claim. You cannot bring a claim on behalf of someone else, except in very limited circumstances. A parent or guardian can file a claim for a child under the age of 18, and a court-appointed guardian or conservator can file a claim for their ward, because children under 18 and wards with court-appointed guardians and conservators do not have the legal capacity to be plaintiffs in court. If you are a court-appointed guardian or conservator, list yourself as guardian or conservator, and the person you are a guardian or conservator for as ward. *Example*: Lisa Doe, guardian, for Daniel Doe, ward.

A corporation can be a plaintiff in small claims court, if it is registered with the Idaho Secretary of State. The claim must be filed by an officer of the corporation. If you are filing your claim as the officer of a corporation, list the name of the corporation and your name and title. *Example*: ABC Corporation, by Michael Doe, president.

A partnership can be a plaintiff in small claims court. The claim must be filed by a partner in the partnership. If you are filing your claim as a partner in a partnership, list the name of the partnership, and your name as partner. *Example*: Coal House, a partnership, and Thomas Doe, partner

If you are filing your claim as the owner of an unincorporated business, list the name under which you are doing business, as well as your own name. *Example*: Susan Doe, doing business as Susan's Repair Shop.

If you are filing your claim as the trustee of a trust, list the name of the trust, *Example*: Doe Family Trust, by Robert Doe, trustee.

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 a special form -- a letter is sufficient, so 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.

Name and Address of the Defendant

A person under the age of eighteen is called a *minor*. If the defendant is a minor, list the name(s) of the parent(s) or guardian(s) of the minor. *Example*: John and Mary Doe, parents of Jane Doe, a minor.

If the defendant is a business, and the business is a corporation, list the name of the corporation, and the person who is the registered agent of the corporation.
If the corporation is an Idaho corporation, you can find out the name and address of the registered agent by calling the Idaho Secretary of State's Office. *Example*: ABC Corporation, with Betty Doe, registered agent.

If the defendant is a business, and the business is a partnership, list the name of the partnership and at least one partner. It is better to list each of the partners. The judge cannot enter a judgment against any partner who is not named. If the partnership has filed a partnership statement with the Idaho Secretary of State's Office, you can find out the names and addresses of the partners by calling that office. *Example*: Coal House, a partnership, and Thomas Doe, individually and as a partner.

If the defendant is a business, and the business is a sole proprietorship (in other words, if the owner is a person doing business under another name, but it is not a partnership or a corporation), list the owner's name and the business name. If you only know the business name, you may be able to find out the owner's name and address by calling the Idaho Secretary of State's Office. *Example*: Susan Doe, doing business as Susan's Repair Shop.

If your claim is against someone who has insurance, you **cannot** file a claim against the insurance company. For example, if you were in a car accident, and you want to file a claim because the driver of the other car caused the accident, you must sue the driver, not the driver's insurance company.

If you want to file a claim against a government agency, there are some steps you must follow before your file your claim. There is more information about filing a claim against a government agency in Part B of this booklet, under "Laws That Commonly Apply in Small Claims Cases."

The Amount of Money You Are Asking the Defendant to Pay

The amount of money cannot be more than $5,000.00 (plus the cost of the filing fee and the cost of giving notice to the defendant). You cannot sue the defendant for more than $5,000.00 in small claims court.

You cannot avoid the $5,000.00 limit by filing more than one claim. If you file a second claim about the same *transaction or occurrence*, the judge will deny your second claim. If it is obvious that the second claim is about the same transaction or occurrence, the judge may give the defendant a judgment against you for any costs the defendant had because of the second claim. For example, if you are a landlord and your claim is about unpaid rent and damages to the rental property, you cannot file one claim for the unpaid rent and another for the damages to the rental property.

You cannot increase the amount you are asking for unless you file an *amended claim* for the larger amount. To file an amended claim, you must complete a new claim form, and write the word "AMENDED" next to the word "CLAIM" at the top of the form. You must file the form with the court clerk and give notice to the defendant of the amended claim, following the same steps for filing and giving notice of your original claim. (There is information about giving notice to the defendant later in this booklet, in Step 2.)

You cannot get a judgment for punitive damages or pain and suffering damages in small claims court. If you want to get a judgment for punitive damages or pain and suffering damages, you must file a complaint in district court or the magistrate division of district court. If you need information about filing a complaint, you should talk to a lawyer.

Personal Property You Are Asking the Defendant to Return

Personal property is anything other than land or buildings. If the defendant has personal property that belongs to you, you can use small claims court to ask for the return of your personal property.

If you are asking the defendant to return personal property, you must describe the property in enough detail so that the defendant can tell what property you are asking for. It is better to describe the property in enough detail so that someone else would be able to recognize the property when they looked at it. The best description would include the make, model and serial number provided by the manufacturer of the property you are asking for. If there is not enough space on the claim form, you can type it or write it (in black ink) on another piece of paper and give it to the court clerk with your claim form.

You must also write down the value of the property. You cannot ask for the return of property that is worth more than $5,000.00 in small claims court. If you are asking for the defendant to pay you money *and* to return personal property, the total cannot be more than $5,000.00. (But you can ask for the return of personal property worth up to $5,000.00, *or* for the defendant to pay you money for the value of the property, up to $5,000.00.) You cannot avoid the $5,000.00 limit by filing more than one claim about the same *transaction or occurrence*.

A Short Description of the Basis for Your Claim

You must describe the basis for your claim in enough detail so that the defendant will know what you are suing about, and so that the judge will know generally what type of case he or she will be hearing. No special language is required.

For example, if your claim is about a car accident, you could simply write "car accident." If the defendant wrote you a check and the bank did not pay on the check, you could simply write "bad check." If you went to a shop to have your lawn mower repaired, and the repairs were not done properly, you could write "faulty lawn mower repairs." If you made the defendant a loan and the defendant did not pay it back when it was due, you could simply write "default on loan" or "overdue loan."

The Date Your Claim Arose

You must write down the date your claim arose. The date can be a "rough" date, but you should include at least a month and a year the best that you can remember.

For example, if your claim is about a car accident, you should put down when the accident happened. If your claim is about a renter who didn't pay rent, or who damaged the rental property, you could put down when the rent was supposed to be paid, or when the renter moved out. If your claim is about a landlord who didn't return your security deposit, you would put down the date the security deposit should have been refunded.

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. If you file a claim after the time limit, the judge will deny your claim.

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. Generally, you should file your claim within a year after the claim arose, but there are many cases in which the time limit is more than one year, and a few in which it is shorter. The judge will decide at the hearing if your claim is within the time limit.

STEP 2: GIVING NOTICE OF YOUR CLAIM TO THE DEFENDANT

You must give notice of your claim to the defendant. If there is more than one defendant, you must give notice of your claim to each defendant. If you are suing a married couple, notice must be given to each spouse. The judge cannot give you a judgment against a defendant who was not given notice.

The procedure for giving notice to the defendant is called *service of process*. There are specific steps that must be followed, and it is very important that they be done correctly. If service of process is completed, and the defendant does not answer your claim, the judge can give you a default judgment against the defendant. If service of process is not completed, or is not completed correctly, and the defendant does not answer your claim, the judge cannot give you a default judgment, and your claim may be dismissed.

The court clerk will provide the papers to be given (served) to the defendant. These include a copy of your claim, a summons, an answer form, and a sheet with information for defendants in small claims cases. 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. Service of process should be completed within 30 days after you file your claim. In most counties, if service is not completed 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.

Service (notice) by Certified Mail

You can ask the court clerk to serve the defendant by certified mail. If you want the defendant served by certified mail, you must pay the clerk for the cost of mailing. In some counties the cost of mailing must be paid by cash or money order; in some counties the court clerk will accept a personal check.

The court clerk will mail the papers to the defendant. The papers will be sent by certified mail, *return receipt requested*. The defendant must sign the return receipt to receive the mail. The post office will mail the signed receipt back to the court clerk. If the clerk does not receive the 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 service by the sheriff's office or by a private process server, but is often not completed because the defendant does not sign the receipt.

If you want to serve process by certified mail, you must mark the appropriate

space near the bottom of your claim form. You should call the court clerk's office a couple weeks after you filed your claim, and ask the court clerk if the clerk's office has received the return receipt, and if the receipt is signed by the defendant. If you call a couple weeks after you filed the claim, and if service of process is not completed, you'll still have a couple weeks left to try a different method to serve process.

Personal Service (notice) by the Sheriff's Office

In some counties, you can ask the county sheriff's office to serve process on the defendant. (Some counties have a marshal's office that will serve process in small claims cases.) The sheriff's office will charge a service fee. In some counties, you must pay the fee by cash or a money order; in some counties the sheriff's office will accept a personal check. In some counties, this fee is *non-refundable*; it will not be returned to you for any reason. In some counties, the sheriff's office will return a portion of the fee if the sheriff was not able to deliver the papers. If you win your case, the judge will order the defendant to pay you for the cost of the service fee.

In some counties, the court clerk will collect the fee for the sheriff, and will give the sheriff's office the fee and the papers to be served on the defendant. In some counties, the court clerk will give you the papers, and you will have to give the papers and pay the fee to the sheriff's office. If the clerk gives you the papers to take to the sheriff's office, you should go there promptly, so the papers can be served promptly.

You will be asked for any information you have that describes the defendant and where the defendant can be found. This may include:

- The defendant's sex, race, age, height, weight, hair color, birth-date or age.
- The address and phone number where the defendant lives.
- The name of the defendant's spouse, or other persons over 18 who live at the defendant's home.
- The name, address and phone number of the place where the defendant works.
- If the place where the defendant lives or works does not have a street number, directions to locate the place where the defendant lives or works. A route number or box number is not enough.
- The make, model, year, or license number of the defendant's car.

You must provide information where the defendant can be found. The sheriff's office will not investigate to find the defendant for you.

If you filed your claim in one county, and the defendant is to be served in another county, you must go to the sheriff's office in the county where the defendant is to be served to arrange for service of process.

To serve process, the papers must be delivered to the defendant in person, or to a person at least 18 years old at the place where the defendant lives. The sheriff's office will prepare a "Sheriff's Return of Service." If the sheriff was able to deliver the papers, the return will state that process was served, and when and how it was served (on each defendant, if there is more than one)). If the sheriff's office was not able to deliver the papers, the return will say so. (It may say "Not Found" or "Unable to Locate" or something similar.)

In some counties the sheriff's office will file the return with the court clerk; in some counties the sheriff's office will give you the return and you will have to file it with the court clerk (in the county where you filed your claim). If the sheriff's office gives you the return to file, you should file it promptly, so service of process can be completed within 30 days after you filed your claim.

Personal Service (notice) by a Private Process Server

You can ask a private process server to serve process on the defendant. You can find private process servers in the phone book. The process server will charge you a fee. If you win your case, the judge will require the defendant to pay you for any reasonable costs for service of process.

If you want to use a private process server, the clerk will give you the papers for service of process. You should contact the process server promptly, so that the papers can be served promptly.

The process server will ask you for information that describes the defendant and where the defendant can be found, much like the sheriff's office does. If you do not know where the defendant can be found, some process servers provide investigative services. The process server will charge you more to find the defendant for you.

If you filed your claim in one county, and the defendant is to be served in another county, you will probably need to go to a process server in the county where the defendant is to be served to arrange for service of process. There are some process servers that work in more than one county, but they may charge you more depending on how far they have to travel to serve process on the defendant.

To serve process, the papers must be delivered to the defendant in person, or to a person at least 18 years old at the place where the defendant lives. The process server must prepare an "Affidavit of Service." If the process server was able to deliver the papers, the affidavit must state that process was served, and when and how it was served (on each defendant, if there is more than one). The affidavit must be signed by the process server and notarized. If the process server was not able to deliver the papers, the return will say so. (The affidavit may say "NOT FOUND" or "UNABLE TO LOCATE" or something similar.)

Some process servers will file the affidavit with the court clerk; some process servers will give you the affidavit and you will have to file it with the court clerk (in the county where you filed your claim). If the process server gives you the affidavit to file, you should file it as soon as possible, so that service of process can be completed within 30 days after you filed your claim.

Personal Service (notice) by any Person not a Party and at least 18 Years Old

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. The person who is going to serve process cannot be a plaintiff or defendant in your case, and cannot be an employee of the plaintiff or defendant in your case. A friend or relative may serve the papers, but it is usually better to have a neutral person do it. (If a question is raised later about whether service of process was properly completed, the person who served process may have

to testify about it in court, and a friend or relative may appear to be a biased witness.)

If you want to ask another person to serve process on the defendant, the clerk will give you the papers for service of process. The person who is going to serve process is the called the *process server*. The process server must deliver the papers to the defendant in person, or to a person at least 18 years old at the place where the defendant lives. If the process server uses the second option, the process server must get the name of the person the papers were delivered to, verify that the person is over 18, and verify that the place the papers were delivered to is the place where the defendant lives. (The process server can verify this by asking the person the papers are delivered to.) The papers should be served on the defendant as soon as possible, so that service of process can be completed within 30 days after you filed your claim.

The process server must prepare an "Affidavit of Service." The court clerk has a form for you to use for the affidavit. If the process server was able to deliver the papers, the affidavit must state that process was served, and when and how it was served. The affidavit must also state that the process server is 18 years of age or older, and that the process server is not a party to the case or an employee of a party to the case. The affidavit must be filled out with a typewriter or printed in black ink. The affidavit must include the same *caption* as your claim (the name of the court, the names of the plaintiffs and defendants, and the case number.) The process server must sign the affidavit in front of a notary or a court clerk. If it is signed in front of a notary, the notary must sign and seal the form. Either you or the process server must file the completed form as soon as possible after the papers were served, so service of process can be completed within 30 days after you filed your claim.

If there is more than one defendant, then the process server must prepare one affidavit for each defendant that was served, or must prepare one affidavit that states how and when each defendant was served.

STEP 3: THE DEFENDANT'S ANSWER TO 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 within 20 days after the defendant is served with process.

When the court clerk receives the defendant's answer, the court clerk will schedule your claim for a "contested claim" hearing. This hearing is when you and the defendant come to court to tell the judge about your case. Generally, the court clerk will try to schedule your hearing for a date within 30 days after the defendant files the answer, but the time may be longer if the court has a backlog of pending small claims cases. The court clerk will mail you and the defendant a notice with the date and time of the hearing. The court clerk will include a copy of the defendant's answer with your notice of hearing.

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 include the same *caption* as your 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 motion. 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 defendant 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 in 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 defendant of the schedule change before the hearing.

What happens if you don't come to the hearing?

If you do not appear at a default hearing, the judge will *dismiss* your claim *without prejudice*, which means you can re-file your claim later.

If you do not appear at a contested claim hearing, and the defendant does not appear either, the judge will *dismiss* your claim *without prejudice*, which means that you can re-file your claim later.

If you do not appear at a contested claim hearing, and the defendant does appear, the judge will dismiss your claim *with prejudice*, which means you cannot re-file your claim later.

If your claim is dismissed with prejudice, you can ask the judge to *set aside* the dismissal. A request to set aside a dismissal should be made within a reasonable time; usually, within 2 weeks after the judgment was entered. To ask the judge to set aside the judgment, you must file a "Motion to Set Aside Dismissal With Prejudice" 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. The motion must have the same *caption* as your claim (the name of the court, the names of the plaintiffs and defendants, and the case number). You must explain why you were not at the hearing, 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 your claim, and deny your motion.

2. The judge may decide that your motion shows that you had good cause for failing to appear at the hearing on your claim, and grant your motion. If the judge grants your motion, the judge will set aside the dismissal of your claim, and the court clerk will schedule a new hearing for your claim. The court clerk will mail you and the defendant a notice of the date and time for the new hearing on your claim.

3. The judge may schedule a hearing on your motion. The court clerk will mail you and the defendant 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 not appearing at the hearing on your claim, the judge will grant your motion, and set aside the dismissal of your claim. If the judge sets aside the dismissal of your claim, the judge will go ahead and have the hearing on your claim at that time. So if you receive a notice of a hearing on your motion, you need to come to the hearing on the motion, and be prepared to have the hearing on your claim.

If the judge sets aside the dismissal, and if the defendant had costs from having to attend a second hearing, the defendant can ask the judge to order you to pay the defendant for those costs.

Settlement

You and the defendant 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 defendant 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.

STEP 4: IF THE DEFENDANT DOESN'T ANSWER YOUR CLAIM - THE DEFAULT JUDGMENT

If the defendant does not file an answer (and if 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 hearing is when you come to court to tell the judge about your case, and to ask the judge for a *default judgment*. Generally, the court clerk will try to schedule your hearing for a date within 30 days after the deadline for filing the answer, but the time may be longer if the court has a backlog of pending small claims cases. The court clerk will mail you a notice with the date and time of the hearing. (If the papers have not been filed with the court to show that service of process on the defendant has been completed, your claim will be dismissed for lack of service. If your claim is dismissed for lack of service, your case can be reopened later.)

The Default Hearing

The default hearing is when you come to court to tell the judge about your case, and ask the judge for a default judgment. When your case is called, the judge will first ask that you be sworn to tell the truth. (You'll stand, raise your right hand, and the judge or the court clerk will ask if you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth.) Some judges will ask you to sign a form, stating that the defendant is not a member of the armed forces, not a minor, and not incompetent.

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

1. The judge will check to make sure that the papers are in the court file to show that notice was properly given to the defendant. The judge cannot give you a default judgment unless the papers are in the court file to show that notice was properly given to the defendant.

2. The judge will ask you if the defendant is a member of the Uniformed Services (currently on active duty in the Army, Air Force, Navy, Marines, etc.) There is a federal law that says that default judgments cannot be entered against men and women who are on active military duty and unable to respond. You must be able to truthfully tell the judge that the defendant is not a member of the uniformed services, or that you have made reasonably diligent efforts but were not able to find out whether the defendant is a member of the uniformed forces. 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 .

3. The judge will ask you if the defendant is a minor (under the age of 18 years), or if the defendant is incompetent (is mentally disabled and unable to understand the nature of the proceedings). The judge cannot enter a default judgment against a minor or someone who is legally incompetent. You must be able to truthfully tell the judge that the defendant is not a minor and is not incompetent.

4. The judge will ask you to briefly explain your claim, and check any exhibits you have brought, to verify that your claim has a factual and legal basis.

If these four requirements are met, the judge will fill out a form called a *judgment*. The judgment will say that it is *in favor of the plaintiff*. The judgment will state the amount of money the defendant is to pay to you, or the personal property that the defendant is to return to you, and it will be signed and dated by the judge. The judgment will state that it is a *default judgment.*

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

Default Affidavits

In some counties, default judgments are entered based on affidavits. The court clerk can tell you if defaults are done by hearing or affidavit in your county. If you are in a county where default judgments are entered based on affidavits, you must get the proper form from the court clerk. The form is called an "Affidavit of Competence, Non-Military Service, and Amount Due. "

Your affidavit must be typewritten or printed in black ink. Your affidavit must include the same *caption* as your claim (the name of the court, the names of the plaintiffs and defendants, and the case number). You must complete the form, and sign it 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. When you have completed the affidavit, you must give it to the court clerk for filing.

Fill out the form completely. This includes making copies of any documents to support your claim, and attaching them to the affidavit.

You must file the affidavit promptly. The deadline for filing the affidavit varies depending on the county. You should call the court clerk's office as soon as possible after the defendant's deadline for filing an answer, to verify that the defendant did not file an answer, and you can ask the court clerk what the deadline is in your county. If there is no deadline, you should file your completed affidavit within two weeks after the deadline for the defendant to file an answer. If you do not file your affidavit promptly, the judge may dismiss your claim. The claim will be dismissed *without prejudice*, which means that you can re-file your claim later.

After you file your completed affidavit, the court clerk will give your case file to the judge. The judge will review the file, looking for the same information in the file that a judge would be looking for at a default hearing, which is described in the section just before this one. You will be notified if the judge decides that the information in the file in your case file is not complete.

If the judge decides that the information in the file is complete, the judge will fill out a form called a *judgment*. The judgment will say that it is *in favor of the plaintiff*. The judgment will state the amount of money the defendant is to pay to you, or the personal property that the defendant is to return to you, and it will be signed and dated by the judge. The judgment will state that it is a *default judgment*. The court clerk will mail copies of the judgment to both parties.

Setting Aside a Default Judgment

The defendant can ask the judge to *set aside* a default judgment. To ask the judge to set aside the judgment, the defendant must file a "Motion to Set Aside Default Judgment" with the court clerk. The motion must be filed within a reasonable time; usually within 2 weeks after the defendant is given notice that the judgment was entered. The defendant must show that the defendant had good cause for failing to file an answer to your claim by the deadline in the summons. The defendant must also file the defendant's answer along with the motion.

If the defendant files a motion to set aside the default judgment, one of the following three things will happen:

1. The judge may decide that the motion shows that the defendant did not have good cause for failing to file an answer, and deny the motion.

2. The judge may decide that the motion shows that the defendant had good cause for failing to file an answer, and grant the motion. If the judge grants the 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 defendant a notice of the date and time for the hearing on your claim, and will mail you a copy of the defendant's answer.

3. The judge may schedule a hearing on the defendant's motion. The court clerk will mail you and the defendant a notice of the date and time for the hearing on the motion. If the judge decides at the hearing on the defendant's motion that the

defendant had good cause for failing to file an answer, the judge will grant the defendant's 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 your claim at that time. So if you receive a notice of a hearing on a motion to set aside the default judgment, you need to come to the hearing on the motion, and be prepared to have a hearing on your claim.

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

STEP 5: IF THE DEFENDANT DOES ANSWER YOUR CLAIM - GETTING READY FOR A HEARING ON A CONTESTED CLAIM

At the hearing, the judge will ask you to explain why the defendant should pay you the money you are asking for, or why the defendant should return the property you are asking for. The judge will also ask you to explain the reasons for the amount of money you are asking for. The defendant may disagree with your claim -- about whether the defendant should pay you any money, or about the amount of money the defendant should pay, or whether the defendant should return the property you are asking for. If the defendant disagrees with your claim, the judge will ask the defendant to explain why the defendant disagrees.

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 prove your claim. 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 your claim is about a car accident, someone who saw the accident may be an important witness. If your claim is about a verbal agreement, someone who heard you and the defendant making the agreement 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 way 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 is usually 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 distance 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 you must fill out the form. After you have filled out the form, the court clerk will issue the subpoena. You must have the subpoena served on the witness, much like giving notice of your claim to the defendant as described in Step 2 above. The subpoena must be delivered to the witness in person. You can have the subpoena 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.) A sheriff's return of service or a process server's affidavit of service must be filed with the court clerk. The sheriff or a private process server will require you to pay a service fee. The witness may require you to pay a witness fee of $20.00 plus their mileage at $.30 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 claim is about a written agreement (called a *contract*), you should bring all of the contract papers.

If your claim is about a past due installment loan or other past due account, you should bring a copy of the account which shows the charges to the account, the payments on the account, and the current balance.

If your claim is about a defective product, you should bring any warranty papers that came with the product you bought.

You should bring receipts for any costs or expenses that you are asking the defendant to pay.

If your claim is about damage to property, you should bring photographs that show the damage. If you have not had the damage repaired, you should bring at least two estimates of the cost of the repairs.

If your claim is about property that has been destroyed or lost, you should bring estimates of the value of the property. Receipts for the cost of the property that was lost or destroyed, or receipts for the cost of replacement property may also be useful.

If your claim is about lost wages, you should bring something from your employer that shows how much you lost -- such as pay stubs that show your usual wage and the time you missed at work.

If your claim 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 claim is about a bad check, you should bring the returned check. There is a law that allows you to claim damages in addition to the amount of the check. If you want to claim the additional damages, there are certain steps you must follow **before** you file your claim. There is more information about claiming damages for bad checks later in this booklet, in Part B, under "Laws that Commonly Apply in Small Claims Cases." If you follow those steps, you will have a letter and a certified mail receipt that you should bring to the hearing.

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 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. You may need an expert witness to review the facts of your case, to tell the judge if the defendant's work met the minimum standards for that trade or profession, and to tell the judge if the failure to meet those standards caused your damages.

For example, your claim may be that your car wasn't running right, so you took it to a mechanic and paid money to get it fixed. You got the car back, 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 defendant 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 defendant did wrong or because of some new problem.

If your claim is against a doctor, a dentist, a lawyer, an accountant, or any other professional, then you *must* have a statement or testimony from an expert witness. The witness must be an expert in the defendant's profession, who has knowledge of the standards of the profession in the local community, who has reviewed the facts of your case, who will testify that the defendant's work did not meet those standards, and who will testify that the failure to meet those standards was the cause of your damages. These types of claims are called *malpractice* claims.

Malpractice claims can be complicated, and in some cases, there may be future damages that you don't yet know about. You should talk to a lawyer before you decide if you want to use small claims court for this type of claim.

STEP 6: IF THE DEFENDANT DOES ANSWER YOUR CLAIM - AT THE HEARING

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.

If you do not appear at the hearing, the judge will dismiss the claim.

If you appear at the hearing, but the defendant does not, the judge may give you a *default judgment*. If the judge gives you a default judgment, the defendant can ask the judge to set aside the judgment, but the defendant must show that the defendant had good cause for failing to appear at the hearing. (There is information about default judgments and motions to set aside default judgments earlier in this booklet, in Step 4.)

If you and the defendant both appear at the hearing, and you and the defendant *agree* about your claim, the court will enter a *stipulated judgment*.

Stipulated Judgments (when the defendant comes to the hearing and you both agree about your claim)

If the defendant appears at the hearing, and if you and the defendant agree about your claim, then 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 defendant have agreed to solve things between yourselves and don't need a judgment from the court), the judge will dismiss your claim.
- If you and the defendant have agreed 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 your claim *without prejudice,* which means that you can refile your claim later if the defendant does not do what you and the defendant agreed.
- If you and the defendant agree that you are not entitled to a judgment, the judge will dismiss the claim *with prejudice*, which means that you can't refile the claim later.

- If you and the defendant agree that you are entitled to a judgment, and if you agree about the amount of money the defendant should pay you, or the personal property the defendant should return to you, 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 the defendant is to pay to you, or the personal property that the defendant is to return to you, and it will be signed and dated by the judge.

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

Hearings in Contested Cases

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. 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 plaintiff's table. The defendant and the defendant's witnesses will go to the table marked as the defendant's table. (There is information about witnesses earlier in this booklet, in Step 5.)

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 you to explain your claim. The judge will also ask you to explain the reasons for the amount of money you are asking for. After you explain your side of the case, the judge will ask the defendant to explain why the defendant disagrees with your claim. After the judge hears the defendant's side of the case, the judge may ask you if there is anything else you 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 proving the *elements* of 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. 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.

While the defendant is explaining the defendant's side of the case to the judge,

you should not interrupt. Also, many judges will not allow you to ask the defendant questions. If there is a question you would like to ask the defendant, 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 defendant directly, or the judge may ask the defendant 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 see, 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 decides your case. 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 that 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 the defendant should pay you money, or the defendant should return personal property to you, the judgment will say that judgment is entered *in favor of the plaintiff.* If the judge decides the defendant should pay you money, the judgment will state the amount of money the defendant is to pay. If the judge decides the defendant should return your personal property, the judgment will describe the personal property that the defendant is to return to you. If the judgment is in your favor, the judgment will also require the defendant to pay you for the cost of the filing fee you paid to file your claim, and may require the defendant to pay you for the cost you paid to give notice of your claim to the defendant; the judgment will state the amount of money the defendant is to pay to you for those costs.

If the judge decides that the defendant should not pay you 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 defendant a copy of the judgment before you leave the courthouse, or mail one to you and the defendant 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 very long. 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 the copy of the tape.

If you disagree with the judgment, you can file an *appeal.*

STEP 7: APPEALS OF SMALL CLAIMS JUDGMENTS

Filing an Appeal

If the judge enters judgment in favor of the defendant, or if the judge enters judgment in your favor, but for less than what you asked for, you can file an appeal. If the judge enters judgment in your favor, the defendant can file an appeal.

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. You must fill out the form completely, and you must 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 defendant with the date and time for the hearing.

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 mail you and the defendant a notice of the date and time for 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.

The information in this booklet about interpreters, the courtroom code of dress and

behavior, what happens if you don't come to the hearing or the defendant doesn't come to the hearing, and stipulated judgments applies to the hearing on appeal. Also, you and the defendant can talk to each other to try to settle the appeal any time before the court enters a judgment.

But there are important differences between the first hearing on your claim, and the hearing on appeal. One big 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 your claim 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.

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 not an excuse that you are not a lawyer or that you don't know the law or the rules.

One of the important rules is the *hearsay evidence* rule that generally doesn't allow you to use oral or written statements made out of court by anyone other than the defendant. When you tell the judge something that someone other than the defendant told you, that is *hearsay*. When someone other than the defendant says something in writing, and you give the written statement to the judge, that is *hearsay.* 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 the appeal, the judge will make a written decision, and the court clerk will either give you and the defendant a copy before you leave the courthouse or will mail a copy of the decision to you and the defendant.

Either you or the defendant 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 Idaho 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 8: COLLECTING ON YOUR JUDGMENT

If judgment is entered in your favor, the defendant is required to promptly *satisfy* the judgment, by paying you the amount of money stated in the judgment, and returning to you any personal property described in the judgment. The defendant does not make the payment to the court, and the court will not collect on the judgment for

you. If the defendant does not satisfy 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.

STEP 9: SATISFACTION OF JUDGMENT

After the defendant pays the money or returns the property as required by the judgment, the judgment is *satisfied*. After the defendant has satisfied the judgment, you **must** file a *SATISFACTION OF JUDGMENT* with the court clerk. The court clerk has a form for you to use. The satisfaction of judgment must be typewritten or printed in black ink. It must include the same *caption* as the judgment (the name of the court, the names of the plaintiffs and the defendants and the case number). It must state that the judgment in the case has been satisfied. You must sign it in front of a court clerk or a notary. If you sign it in front of a notary, the notary must sign and seal it. You must file the completed satisfaction of judgment with the court clerk (in the county where your judgment was entered).

If the defendant satisfies the judgment, and you don't file the satisfaction of judgment, the defendant may have a claim against you for damages.

PART B: GENERAL INFORMATION

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 an attorney appear with you or for you at the hearing, but you can talk to a lawyer 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 can appear in court through an owner, or through an employee, so long as the employee is not an attorney.

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. (There is information about witnesses in step 5.) 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.

If you need an interpreter, you must ask for one before the day of your hearing. 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, you should ask for an interpreter at least two weeks before your hearing.

Most counties in Idaho do *not* have full-time Spanish-language interpreters. In counties that do have full-time Spanish-language interpreters, they 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* the day of your hearing.

Settlement

You and the defendant can talk to each other before the hearing to try to solve the problem you filed your claim about. When you and the defendant 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 defendant can talk to each other to try to settle your case at any time before the court enters a judgment on your claim. 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 defendant 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.

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 defendant can also agree to use mediation instead of court. 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.

What Happens If the Defendant Also Has a Claim Against You?

If the defendant has a claim against you, the defendant has two options. The defendant can either file a claim in small claims court, or the defendant can file a complaint in district court.

If the defendant files a claim against you in small claims court, the defendant must give you notice of the defendant's claim the same as you had to give the defendant notice of your claim. The court can set both claims for hearing at the same time. If your claim and the defendant's claim are set for hearing at 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.

If the defendant files a *complaint* against you in district court, the defendant must serve you with a copy of the complaint. If the claim is up to $10,000, the complaint will be filed in the magistrate division of district court. If the defendant files a complaint against you, at the hearing on your claim either you or the defendant can ask the judge to send your claim to the district court (or the magistrate division of the district court) to be heard at the same time as the defendant's complaint. If the defendant files a complaint against you, you should talk to a lawyer about your rights and responsibilities as a defendant in a civil action in district court (or the magistrate's division of the district court).

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 courthouses, on-line, and at many public libraries.

Procedures in Small Claims Court
There are statutes and rules that apply only 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 your claim is about a bad check, there is a state law that allows you to claim damages in addition to the amount of the check. You can ask for damages of $100.00, or triple the amount of the check, up to $500.00. If you want to ask for damages, you must send a certified letter to the defendant at the defendant's last known address at least ten days **before** you file your claim. The letter must demand payment for the check. The letter must say that if the defendant does not pay the check before you file your 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 your cost for filing the claim and giving notice of your 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. 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. 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.

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 seller'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 defendant's negligence and partly the result of the plaintiff's negligence. For example, if your claim is about a car accident, and the accident happened in part because the defendant ran a stop sign, and in part because you were 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 a judge cannot give you a judgment in your favor unless you show that the defendant was more negligent than you were. If the judge decides that you and the defendant were both negligent, but that the defendant was more negligent than you were, the judge will give you a judgment in your favor, but the judge will reduce the amount the defendant is ordered to pay based on your share of the responsibility for the accident. For example, if your damages were $1000 for the cost of repairing your car, but the judge decides that you were 30% responsible for the accident, the judge will order the defendant to pay 70% of your damages, or $700.00

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 your claim, and you can file it in bankruptcy court. You can get more information about bankruptcy proceedings from the U.S. Bankruptcy Court in Boise, Idaho.

Claims Against Governmental Agencies
There are special rules that apply to claims against state or local governmental agencies, which are set forth in a statute called the Idaho Tort Claims Act. This statute can be found at Idaho Code §§6-901 to -929. If your claim is against a state or local

governmental agency, or against an employee of the agency for acts done by the employee acting in the course and scope of employment, you must comply with this statute. For example, before you file your claim in court, you must file a claim with the agency. The claim must contain certain information, it must be filed at a certain office of the agency, and it must be filed within certain deadlines stated in the statute. After a claim is filed with the agency, the agency has a certain amount of time in which to decide whether to pay or deny the claim. Also, there are some types of claims from which a governmental agency is "excepted from liability" - which means there are some types of claims for which a governmental agency can't be sued for damages. These exceptions from liability are also listed in the statute.

A claim against a state or local governmental agency must be filed in the county where the plaintiff lives, unless the plaintiff lives out of state. If the plaintiff lives out of state, then the claim must be filed in the county where the claim arose. Service of process must be made on the state or local governmental agency that is named as a defendant, and service of process must also be made by certified or registered mail to the Idaho Attorney General.

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 Supreme Court website 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 standard forms for small claims court. The forms can also 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
Email ilasboise@mci.net

Idaho Volunteer Lawyers
P.O. 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) 885-4628

Idaho Council on Domestic Violence
and Victim Assistance
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 Plaintiffs Booklet – July 2012