

SMALL CLAIMS PREPARING FOR TRIAL

I. PREPARING FOR YOUR DAY IN COURT

While waiting for your hearing date, prepare your case or defense thoroughly by organizing your thoughts and evidence to make your claim easy to understand. You should prepare a written outline of the important facts and the points you intend to make. You should consider questions the judge might ask, and prepare answers to those questions supported by any available evidence. It is also recommended that you anticipate what the other party may say and what evidence he or she may bring to court.

By thinking ahead, you will be in a better position to present your case. Judges are pressured to process cases quickly thus you can help yourself, in the judge's eyes, by being well prepared. You should also sit through a Small Claims Court session before the date of the hearing. This will give you firsthand information about how Small Claims Court cases are handled.

On the day of your hearing, schedule enough time to get to Court, allowing for possible transportation or parking delays. Once you arrive, relax, listen for announcements, and think about your case. A list of the day's Small Claims Court cases, called a "court calendar," is usually posted outside the courtroom. If you do not find your name or case listed on the court calendar, check with the bailiff or clerk.

II. SETTLING YOUR CASE BEFORE THE HEARING

For most people, any dispute, especially a lawsuit is very stressful. You should be reasonable in your demands to the other party, keep the lines of communication open, and always leave room for possible compromise or settlement with the other party. Be aware that you can settle your dispute at any time before the court date.

If you resolve the problem, it is best to prepare a written settlement agreement (Form L-1151) signed and dated by both parties. The written agreement should describe the arrangements for making payments. If periodic payments will be made, the agreement should indicate the amount of each payment, the date each payment is due, and the consequences of any late payments.

If the parties settle the dispute before the hearing, the plaintiff can file a "Request for Dismissal" (Form CIV-110) with the court. Before doing this, the plaintiff has the right to receive from the defendant full payment of the agreed amount in cash. If it is paid by check, the plaintiff is entitled to wait until the check clears before filing the "Request for Dismissal."

If the dispute is settled on the day of the hearing, both parties should attend the hearing and inform the judge that the claim has been settled. At that time, the judge may (1) dismiss the case without prejudice, (2) postpone the hearing for

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a short period to enable the defendant to pay the claim, or (3) include the settlement agreement as part of a regular Court judgment.

III. GATHERING YOUR DOCUMENTS

Gather any evidence that will help the judge understand the case. Your evidence may include any written contracts, receipts, letters, written estimates, repair orders, photographs, canceled checks, account books, advertisements, warranties, service contracts, or other documents. Whenever possible, bring originals and copies of documents. In property damage cases, some Courts ask the plaintiff to provide two or three repair cost estimates to show the reasonableness of the claim.

Make two copies of any document you intend to give the judge. The judge may ask you to give one copy to the other party and may place one copy in the Court's file. The Court will usually allow you to keep your original.

In Small Claims Court, judges take an active role and may ask questions that will enable them to understand the case. Small Claims Court judges can also consider information and evidence that would not be permitted in other Courts. Therefore, you should not hesitate to take any items or documents to Court.

IV. ARRANGING FOR WITNESSES / DOCUMENTS

Sometimes, you will need a witness's testimony. If a witness cannot attend the hearing, you can ask the witness to write and sign a "Declaration" (which is simply a letter) for submission to the Court. This statement must include all of the witness's testimony. At the end of the statement, the witness must write, "I declare under penalty of perjury under the laws of the State of California that the above is true and correct." The witness needs to date and sign the statement, and write his or her city and telephone number. If the witness is not living in California, the statement should be signed before a [notary public](#). (The judge is not required to accept a written statement, so it is best to have your witness come to the hearing.)

If your witness will not voluntarily come to Court or will not provide documents you need, you can subpoena the witness or documents. A form called a "Small Claims Subpoena and Declaration" (or *Civil Subpoena*) is a Court order that requires a person to come to court.

NOTE: It is best not to force somebody to testify. Nevertheless, a subpoena may be needed to enable a witness to obtain permission from his or her employer to be absent from work to testify in Court.

You can obtain a "Small Claims Subpoena and Declaration" from the clerk of the Small Claims Court or in some counties from the Small Claims Court

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Advisor. After you have completed the “Small Claims Subpoena and Declaration,” it is issued by the clerk of the Court and is a Court order. You then need to serve a copy of the “Small Claims Subpoena and Declaration” on the witness. Unlike the “Plaintiff’s Claim and Order to Defendant” form, you or anybody else can lawfully deliver a copy of the subpoena to the witness. After giving the witness a copy of the subpoena, the original subpoena must be returned to the Court with the completed “Proof of Service” on the back.

A witness can ask for fees of \$35 per day plus 20 cents per mile each way. Witness fees for law enforcement officers and government employees are higher. If a witness asks for fees, the witness need not appear unless the witness receives the required fees. If the witness does not ask for fees, then you do not have to offer them.

If you would like the witness to bring documents to the hearing, you need to check the box on the form requesting the witness to do so. You will have to fill out the declaration form, describing exactly which documents or papers you need and the reasons you need them. Both the Small Claims Subpoena and a copy of the Declaration form must be served on the witness.

Special notice and procedures are required for production of personal records of a consumer. This gives the consumer time so they may limit or quash the subpoena **before** the records are produced, or even before the subpoena is served on the records custodian. You will need to prepare a packet that consists of the “Notice to Consumer”, “Small Claims and Subpoena”, “Declaration of Custodian of Records” forms as well as any other relevant supporting documents. Once this packet is completed, file it with the court. Once filed, you must serve the consumer at least 15 days prior to the date set for production as well as 5 days prior to service on the records custodian. After 5 days, you then serve the records custodian with the paperwork including proof of service on the consumer.

After the subpoena is served, the original (with the completed “Proof of Service” on the back of the form) must be filed with the Small Claims Court clerk before the hearing date.

V. HEARINGS BEFORE TEMPORARY JUDGES

Most Courts use [temporary judges](#) (called [pro tem judges](#)) to hear Small Claims Court cases. A temporary judge is an attorney who has been licensed for a minimum of five years to practice law in California. Each temporary judge is required to complete a training program before hearing cases.

Before a temporary judge may hear a case, all parties who appear at the hearing must give their consent. Some Courts require the parties to sign a

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written consent form. If either party does not consent, the clerk may reschedule the hearing to a later date when a regular judge or Court commissioner is available.

VI. PRESENTING YOUR CASE OR DEFENSE

Before the hearing, the Courtroom procedures are explained either by the judge or by a Court officer. Many Courtrooms now use videotapes to explain these procedures. The Court will then call roll to see which plaintiffs and defendants are present for their hearings. Listen carefully. All parties present will be asked to take an oath.

The Court will then hear each case. Usually, the cases in which the defendant is not present - called "default cases" - are heard first. Cases are not always called in the order listed.

Many judges will ask for a short overview of the case. In an auto accident case, if the defendant has admitted that the accident was his or her fault, tell that to the judge, and say that the issue is the amount of damages and not liability. In a contractor case, the plaintiff might say, "Your Honor, I am suing the defendant roofing contractor for \$1,000 because he performed defective work on my roof, and it cost me \$1,000 to get it done right." In an auto repair case, the plaintiff might say, "Your Honor, I am suing the defendant auto mechanic for \$600 because he didn't fix a number of things on my car for which he charged me, and I have a report from the Bureau of Automotive Repair that explains what he did wrong." By giving this overview, you give the judge guidance on what facts to focus on. However, if you start out your auto accident case in a narrative style, the judge will not learn about the issues of your case until later.

Some judges may investigate the case after learning relevant information. For example, a judge might ask the Bureau of Automotive Repair to investigate allegations from a consumer that an auto repair shop had performed fraudulent work. Some judges will consult with contractors whom they know and trust to obtain advice in a case involving another contractor. If your case involves inadequate work by an auto paint shop, you may want to bring your car to the courthouse parking lot and ask the judge to look at your car. A judge might visit the location where an auto accident occurred. However, it is up to the judge to determine if an investigation is appropriate.

Be brief in making your points. Do your best to be objective and unemotional. The judge will be interested only in hearing the facts about your dispute. Do not raise your voice or make insulting remarks about the other party or any witness, no matter how angry you are. During the hearing, you should speak to the judge and not to the other party. Most important, you must be truthful in everything you say.

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VII. ASKING FOR YOUR COURT COSTS

At the hearing, you should ask the judge to award your costs if you win. Most judges award court costs routinely to the winning party. Costs are Out-Of-Pocket expenses by filing and presenting a lawsuit. If you are awarded costs, the award is included in the judgment against the losing party. If neither party “loses,” the judgment might not include court costs.

Be sure to keep receipts for your filing fees and other Out-Of-Pocket costs. Only some kinds of costs can be recovered from the losing party. Costs that may be recovered include amounts you have paid for filing fees, service of process fees (if reasonable), witness fees (but generally not for expert witnesses), and fees for service of subpoenas (of witnesses or documents). Other kinds of out-of-pocket expenses may be awarded at the judge's discretion, so you should bring your receipts to the hearing.