

SMALL CLAIMS HOW TO VACATE A DEFAULT JUDGMENT

If a judgment is entered against a person who did not appear at trial, the non-appearing party can ask the court to vacate the judgment in certain circumstances.

If the Plaintiff did not Appear (CCP Section 116.720)

- The case is automatically dismissed without prejudice meaning the plaintiff may re-file for the same case again.

If the Defendant did not Appear (CCP Section 116.730)

- A defendant who failed to appear for trial must first ask the Small Claims Court to vacate or set aside the judgment, by filing a notice to vacate the judgment. The motion shall be filed within 30 days after the clerk has mailed notice of entry of judgment to the parties.

If the defendant was properly served, he/she must file a “Notice of Motion to Vacate the Judgment and Declaration” (SC-135) with the small claims court within 30 days after the date the court mailed the “Notice of Entry of Judgment.” This motion form fee is \$20.00.

If the defendant was not properly served, he/she has up to 180 days after learning that the judgment was entered to file the “Notice of Motion to Vacate Judgment and Declaration.” (SC-135) (CCP Section 116.740). This motion form fee is \$20.00.

1. To make this request, the defendant must file a “Notice of Motion to Vacate Judgment and Declaration” and explain why he/she did not appear at the hearing.
2. The clerk will schedule a hearing. The request to vacate the judgment may be granted, but only if the judge finds *good cause* for the defendant’s not having attended the hearing.

If the motion is denied, the defendant has 10 days from the date of denial or of the mailing of the notice of denial to request a review of the denial. This request is accomplished by filing a “Notice of Appeal” (SC-140) of the denial with the Small Claims Court. This appeal form fee is \$75.00.

Updated: April, 2009

Produced by the Small Claims Court Advisory Program of the Legal Aid Society of Orange County
Phone (714) 571-5277 Website (<http://www.ocsmallclaims.com>)