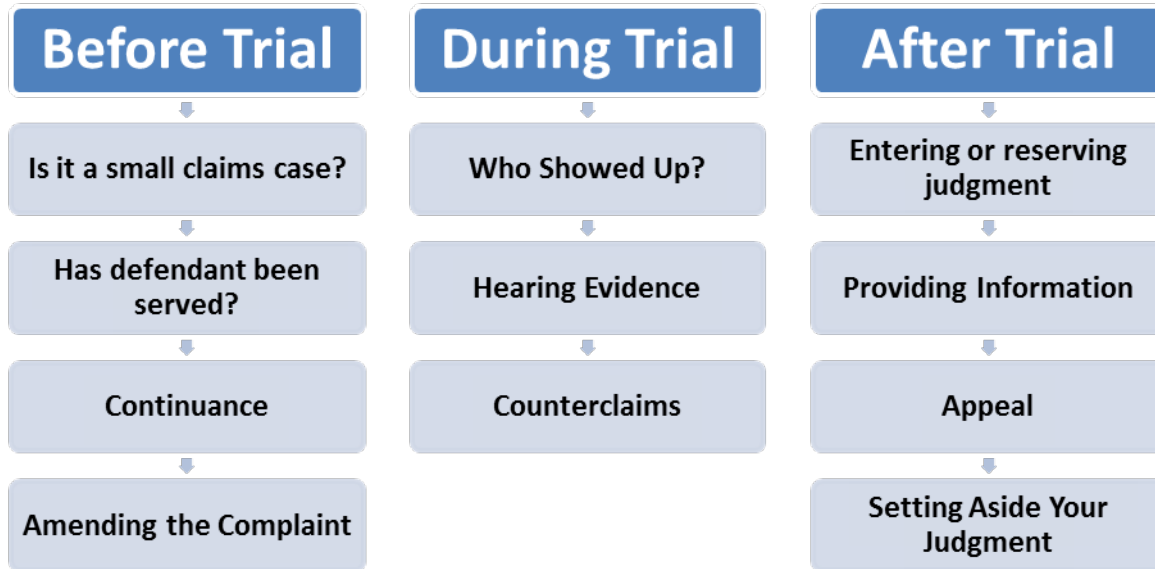

SMALL CLAIMS PROCEDURE II



AMENDING THE COMPLAINT



Just one more thing!

Plaintiffs are allowed to change – “amend”—their complaints even after trial begins, so long as the defendant has adequate notice and time to prepare a response. A small change—such as correcting the spelling of a name—requires little notice, while a significant change, such as asking for money instead of personal property, may require a continuance. Amendments are NOT allowed if they change the party being sued; in that case, the plaintiff must file another lawsuit and serve the proper defendant. An amendment can literally be handwritten on the complaint, and should be noted in the judgment.

WHO SHOWED UP

General Rule: A party may represent herself in small claims court, or she may be represented by an attorney.

General Rule #2: The plaintiff in a lawsuit must be the *real party in interest*—the person who has actually suffered injury.

EXERCISE: SHOULD YOU MAKE AN EXCEPTION?

1. Patsy Plaintiff is elderly and intimidated by the very thought of coming to court, so she brings her grandson Gary with her to present her evidence. Can Gary present the case, so long as Patsy is there to testify?

2. Patsy Plaintiff is still intimidated, so she brings her grandson with her, but this time she's prepared to prove that Gary has a power of attorney. Does a power of attorney authorize Gary to present her case in small claims court?

3. Patsy isn't going to give up. Due to her ill health and the fact that she often becomes confused, Gary has been appointed her legal guardian. The case is captioned Gary Grandson on behalf of Patsy Plaintiff vs. Dudley Defendant. Does a general guardianship authorize Gary to present her case?

4. Young Yolanda is 12 years old, and the clerk appointed her father as guardian ad litem when Yolanda filed this small claims action. Is Mr. Yolanda authorized to present the case on his daughter's behalf?

5. Larry Landlord lives in Louisiana, and he pays Michael Manger to act as his rental agent. Michael files a summary ejection action against Tommy Tenant (Michael v. Tenant). Can Michael present the case? Can you enter judgment in favor of Michael?

6. When Larry Landlord sues Tommy Tenant for back rent and summary ejection, Tommy hires Amanda Attorney to represent him in court. When you call the case, Amanda is present and prepared to proceed, but Tommy is out of town. Can you hear the case without Tommy?

7. Patsy Plaintiff brings an action against Mike's Mechanics, a sole proprietorship. Billy, an employee who handles the business end of the business, appears on behalf of Mike's Mechanics. Can Billy present the case for Mike's Mechanics?

8. Patsy sues Mike's Mechanics, Inc., and Billy appears on behalf of the corporation. Can Billy represent Mike's in this case?

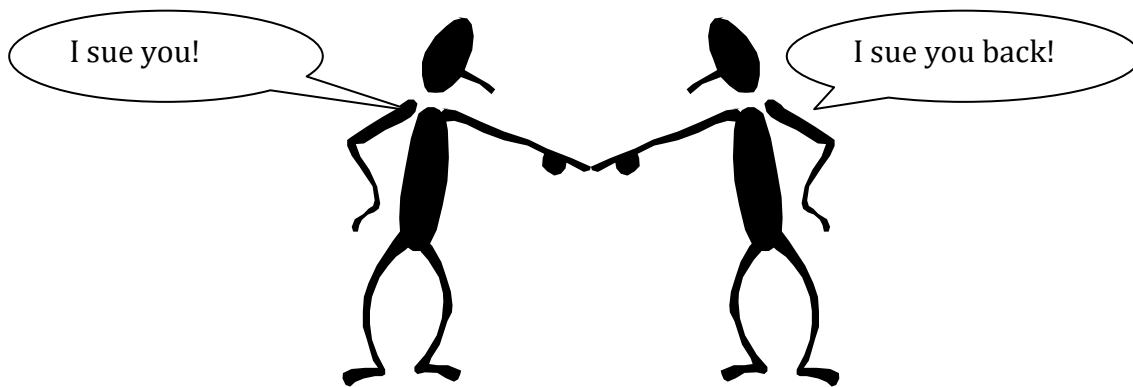
HEARING EVIDENCE

No default judgment in small claims court.

Plaintiff must introduce enough evidence to demonstrate that each essential element of the case is probably true.

- ❖ *Plaintiff always testifies first.*
- ❖ *Defendant has a right to ask questions, but often will choose simply to tell his or her story instead.*
- ❖ *Defendant does not have to introduce evidence (and actually may not even be present) unless plaintiff has produced enough evidence to win, assuming you believe that evidence to be true. This is called establishing a prima facie case.*
- ❖ *If plaintiff establishes a prima facie case, defendant has an opportunity to produce evidence either contradicting an element of plaintiff's case or establishing some affirmative reason plaintiff should not win.*
- ❖ *Defendant has the burden of proof on affirmative defenses.*
- ❖ *Magistrate decides degree of formality in courtroom.*

COUNTERCLAIM



Rules for Counterclaims

1. Must be filed in clerk's office before time the case is set for trial.
2. Plaintiff is entitled to continuance if necessary to prepare a defense.
3. May not exceed \$5000.
4. Treated just as though you're hearing two cases back-to-back.
5. Enter your judgment on one judgment form, modifying as necessary.



After Trial

- Entering or reserving judgment
- Providing Information
- Appeal
- Setting Aside Your Judgment

EXERCISE: ARE YOU SMARTER THAN THE AVERAGE BEAR?

1. Is it better to refer to the parties as “plaintiff” and “defendant” when you announce your judgment, or to call them by name?

2. True or False: If you’re not sure about the law, you can tell the parties that you’ll make your decision later and promise to mail them a copy of the final judgment.

3. If you respond to questions about what happens after your judgment is filed with the clerk, should you be concerned about unauthorized practice of law?

4. Should you inform the losing party that s/he has the right to appeal?

5. If you intended to award plaintiff damages for pain and suffering, but forgot to include it in your calculations, can you change your judgment by adding it in, so long as you mail a copy of the final paperwork to the parties?

6. True or false: The parties must be represented by an attorney if they appeal to district court.

7. If the clerk notifies you that you overlooked lack of service in one case and entered judgment against the defendant (who was not present), what should you do?

8. Your chief district court judge has authorized you to hear Rule 60 motions to set aside small claims judgments. A defendant has made such a motion, saying that he missed court because he was involved in an accident. You believe him. What do you do?

EXERCISE: ENTERING JUDGMENT

As a judge, the heart of your job is making decisions. So it's not really surprising that how you communicate your decisions to the citizens affected by them is really important. Take a moment to think about what entering judgment looks like at its best---and at its worst. If you were advising a new magistrate about how to enter judgment, how would you complete the following sentences?

"Whatever you do, DON'T _____."

"One of the worst things I ever saw (or heard of) was a judge in small claims court who

"The most important part of entering judgment is _____"
