

# Content Outline for Basic/ Module 3: Small Claims Procedure, Part 2

## Before You Start Trial, cont'd

### (If defendant is not present): Do you have a satisfactory SCRA affidavit? MR#4.

Affidavit must be satisfactory to you.

If it indicates that  $\Delta$  is not in military, and does not have DOD website info attached, you must consider whether  $\pi$  has provided sufficient reason to support this finding.

If it indicates that  $\pi$  is unable to determine, affidavit should provide additional information as to reason.

If  $\Delta$  is in military, follow local procedure for appointment of attorney and continue case for 90 days.

### Was defendant served at least 5 business days (i.e., one week) prior to trial?

#### MR#5.

If minimum notice requirement not met, continuance is required unless defendant affirmatively waives.

Note special rule for SE: 2 days minimum notice.

## As Trial Begins . . .

### Is someone missing?

If defendant has been served but does not appear, the plaintiff must present evidence sufficient to prove each essential element of the case in the same way as if the defendant were present. (MR#8)

If defendant is present and neither plaintiff nor authorized representative is present, dismiss the case with prejudice.

If neither party is present, follow local practice.

### Is plaintiff the real party in interest? MR#6.

If not, do not dismiss, but instead continue case to allow substitution of correct plaintiff.

### Does plaintiff ask for a voluntary dismissal?

Plaintiff is entitled to voluntary dismissal at any point before completion of plaintiff's evidence. Use AOC G-108.

### Had plaintiff filed (or does plaintiff ask to file) counterclaim?

Plaintiff can file counterclaim at any point up to time case is calendared to be heard.  
If plaintiff misses deadline, plaintiff has waived right to file counterclaim in this action but is still allowed to file separate small claims action.  
Counterclaim must meet requirements for small claims re type of case and amount sought, but there is no requirement that plaintiff reside in county.  
When you try a case with a counterclaim, you're trying two cases in one.

### Does one party ask for a continuance?

Continuance is permissible, but not mandatory, if parties agree to it.  
If one party does not agree, you must determine whether there is good cause for a continuance.

### Do you have any reason to suspect the defendant has filed for bankruptcy? MR#7

If defendant has filed a petition for bankruptcy, federal law automatically stays further action in your lawsuit and affirmatively prohibits you from going ahead. Any judgment you enter would be void.

Use G-108 to discontinue – not dismiss -- the action until the bankruptcy case has been resolved.

The defendant is not legally obligated to prove to you that a bankruptcy petition has been filed. If you have any reason to suspect this is so, do not proceed until you have determined the truth.