

Content Outline for Basic/ Module 4: Small Claims Procedure, Part 3

Conducting Trial

Whether or not defendant is present, the plaintiff has the burden of proving each essential element of the case by the greater weight of the evidence. MR#8

When both parties are present, the plaintiff must testify first.

The defendant is not required to present any evidence until the plaintiff has established a prima facie case.

What if the plaintiff asks to amend the complaint?

Leave to amend “shall be freely granted.”

Typically, question is not whether to allow amendment, but rather what notice is defendant entitled to in light of the change.

I recommend that you note amendment on judgment, rather than having plaintiff write on complaint (unless your clerk says otherwise).

Entering Judgment

Your judgment should dispose of all of the claims of all of the parties. MR#9

Be sure to follow the four steps:

- Make a clear division between the close of evidence and your judgment.
- Begin by identifying the winning party, by name. NOT: “I’m ruling for the plaintiff.”
- Give a brief reason for your decision, making some reference, however brief, to “the law.”
- Inform the losing party of (1) the right to appeal to district court for “a whole new trial” and (2) how to do so.

What if you’re not sure about the correct decision?

Instead of announcing your judgment in open court, you have the option of reserving judgment for up to 10 days (special rule for SE).

Requires you to fill out the certificate of service at bottom of judgment form.

You are responsible for mailing your decision to the parties.

Also useful when you anticipate disruption in courtroom.

After Judgment

Your judgment is a legal event which is final and may be changed in only one of two ways: appeal for trial de novo or being set aside under Rule 60(b). MR#10.

Appeal

You should know and be prepared to inform parties about the procedure for appeal:

- 1) Notice of appeal, either in court or in clerk's office. 10-day deadline
- 2) Mandatory visit to clerk's office to pay costs of appeal. 20-day deadline, except for SE/10.
- 3) Appeal for trial de novo = whole new trial in district court

Rule 60(b) motion to set aside

Judgments are set aside for many reasons, and the decision to do so is typically made by a district court judge.

Some magistrates are authorized by the CDCJ to conduct hearings about whether a judgment should be set aside for one reason only: excusable neglect by a party (which in practice almost always means = failure to show up for trial).

NOTE that error of law by a magistrate is NOT grounds for setting aside a judgment. The only remedy for a legal error by a judicial official is appeal.

NOTE also that a magistrate has no legal authority to correct an error in a final judgment (exception for clerical errors). The remedy, again, is appeal.

After judgment is entered

Your authority to act in a case ends when you enter judgment. You have no authority to assist a plaintiff in collecting a judgment or to protect a defendant from a plaintiff who's breaking the rules. I suggest that you consider using the "What Happens After Small Claims Court" handout as an alternative to answering questions from parties about post-judgment procedure.