

Ely Justice Court

**DEFENDANT'S GUIDANCE FOR SMALL CLAIMS ACTIONS**

If you are being suing, you are the Defendant. This form is addressed to you, as the Defendant. The person who is suing you is the Plaintiff.

1. When you have been sued in small claims, you will receive a copy of the Plaintiff's affidavit, explaining the claimed basis for the lawsuit, and a date and time for you to appear in Court.
2. **Notice:** You are entitled to be served with notice of the claim and trial, at least 15 days prior to the trial. If you received notice, less than 15 days before trial, you may:
  - a. Appear in Court and request the Court reschedule the trial;
  - b. Appear in Court and waive (give up) your right to notice and proceed with trial; or
  - c. Submit a written request to the Court to reschedule the trial. You must send a copy of your request to the Plaintiff.
3. **Admitting Liability:** If you do not wish to dispute or deny or contest the claims, you may:
  - a. Make an out-of-court arrangement with the Plaintiff prior to the hearing; or
  - b. Simply not appear for Court and the Court will enter judgment against you for the amount claimed, plus costs.
4. **Trial:** If you wish to dispute or deny or contest, you must appear at the time and date set for trial.
  - a. When you come to the trial, you must bring everything (e.g. documents, photographs, witnesses, etc.) you need to prove your claim. The Court knows nothing about your case and can make its decision based solely on the evidence presented in the trial.
  - b. You get only one opportunity to defend against the claim.
  - c. The Court must generally schedule multiple hearings at the same time. Your hearing may, therefore, not start immediately at the time it is scheduled.
5. **Witnesses & Evidence:**
  - a. Witnesses
    - i. If a witness will not come voluntarily, you may use the subpoena power of the court. You must request issuance of the subpoena(s) well in advance of the court date (at least two weeks prior) as time will be needed for you to have the witness served. You must put your request for issuance of a subpoena in writing and including enough information to enable service of the person subpoenaed. It is best if you provide as person's correct name, mailing address and a street address where the person can be served.
    - ii. Affidavits and written statements from a witness who do not attend are generally disfavored.
  - b. Evidence
    - i. If you bring physical evidence (e.g. documents, photographs, physical items, etc.) and submit it to the Court, it will not be returned to you.
    - ii. Documents and photographs should be printed. The Court cannot accept or process electronic copies of documents.
    - iii. If the Court has to print documents or make copies for you, you will be charged \$0.50 per page.
6. **Attorneys:** You have a right to hire an attorney to represent you. You do not have the right to a public defender (or other appointed counsel). Attorneys are not required in small claims actions. You may not recover attorney's fees.

7. **Judgment:**
  - a. If you win: you will likely not be obligated to pay anything.
  - b. If the Plaintiff wins:
    - i. Plaintiff is entitled to immediate payment of the full amount of the judgment, including costs.
    - ii. Payments must be made directly to the Plaintiff. The Court does not establish or enforce payment plans.
    - iii. If the Plaintiff utilizes collection processes (e.g. garnishment of wages), you will be required to pay the costs incurred by Plaintiff, which will increase the amounts you owe Plaintiff.
8. Proper courtroom clothing is required. Shorts and/or tank tops are not allowed. Shoes are required. Clothing which shows offensive slogans or pictures is not allowed. Hats and sunglasses must be removed before entering the courtroom. Cellphones and other electronic devices must be silenced.
9. You may be allowed to appear remotely, via audiovisual transmission equipment (i.e. Zoom videoconferencing service). If you wish to appear in such manner, you must put your request in writing and send it to both the Court and the Defendant.