

CLERK OF THE DISTRICT COURT MANUAL

8.0 SMALL CLAIMS

Revised October 2006

8.1 FILING THE CLAIM

The "Small Claims Department of the Magistrate's Division" shall have jurisdiction in cases for the recovery of money where the amount of each claim does not exceed five thousand dollars (\$5,000), and in cases for the recovery of personal property where the value of the property does not exceed five thousand dollars (\$5,000); provided however, that the small claims department shall not award punitive damages or damages for pain or suffering in any proceeding. I.C. 1-2301 et. seq.

Small claims shall be prepared by the claimant upon a form furnished by the Court and shall be filed by the clerk upon payment of the statutory filing fees (see Filing Fee Schedule), but the clerk may assist in the preparation of the claim form when requested by the claimant. Any individual 18 years of age or older, partnership, corporation or association may file a small claim as a plaintiff in the action, which may be signed by an employee of the plaintiff. IRCP 81(a). This includes collection agencies and government entities. (The fee is waived for state and local government filings.)

8.2 VENUE

An action brought in the small claims department shall be brought in the county where the defendant resides or the county where the cause of action arose. However, the clerk should not refuse a claim if filed in an improper venue. In this case, a defendant may request a change of venue if an action is brought in an improper county. I.C. § 1-2301.

8.3 FILING THE ANSWER

IRCP 81(a) has been amended to provide for the filing of answers in small claims cases. The court shall furnish to the plaintiff a form of answer at the time of filing the claim. There is no fee to file an answer. Plaintiff must show by return of service or affidavit that instructions and form of answer were served upon the defendant(s) at the time of service of the claim. The instructions and answer shall notify the defendant that defendant must file the answer with the court, and unless filed within 20 days of service, default will be entered against defendant(s). In the event defendant(s) fails to file an answer or request for trial, plaintiff may secure entry of default as provided in Rule 55, IRCP.

8.4 COUNTERCLAIMS

There shall be no counterclaims filed on a small claim already filed. However, this shall not prevent the filing of a separate small claim in the small claims department, regardless of the residence of the original plaintiff. Such claim may be consolidated for hearing with the original small claim at the discretion of the magistrate hearing the initial small

claim. IRCP 81(b)

8.5 MEDIATION

Some counties have started a mediation program. In mediation, the plaintiff and the defendant will meet with a *mediator*, a person who will help the plaintiff and the defendant try to settle their case. The mediator is like a judge, in that the mediator is *neutral*—the mediator is not on plaintiff's side or the defendant's side. The mediator is different from a judge, in that the mediator does not decide the case—the mediator tries to help both parties come to an agreement, and it is up to each party to make their own decision about whether they want to agree to a settlement.

The Idaho Supreme Court has a list of mediators that have been approved for use in court-ordered mediation as well as suggested forms located at www2.state.id.us/judicial.

8.6 ATTORNEYS

Any party in a small claims action may appear in person or by an authorized non-attorney employee. No attorney can appear with or for a party in any hearing on a small claims action. However, an attorney may appear on appeal or on post-judgment hearings including a hearing on a post-judgment motion to set aside, modify or execute a judgment. IRCP 81(d)(1) An attorney or law firm may appear before the court as any other plaintiff or defendant in a case as long as the attorney or law firm is the actual party involved in the claim.

8.7 WITNESSES

Any party to a small claims proceeding may bring to the hearing witnesses who shall be sworn and may testify on behalf of either party to the small claim. Any party to a small claims action may also subpoena witnesses to the small claims proceeding by a subpoena issued and served in the manner provided by the IRCP, but all costs of service of the subpoena and all witness costs shall be paid for by the party issuing the subpoena to the witness and shall not be included as costs in the small claims proceeding. IRCP 81(d)(2), IRCP 45(c)(2).

8.8 DISQUALIFICATION

The presiding magistrate in a small claims proceeding may be disqualified in the same manner as a presiding judge of a civil action. IRCP 81(e).

8.9 DISMISSAL FOR INACTIVITY OR LACK OF SERVICE

Small claims cases may be dismissed for inactivity or lack of service. Cases may be dismissed without prejudice if service has not been perfected within 30 days. IRCP 81(f) Once an answer has been filed, only a judge can dismiss the case.

Clerical Duties:

1. Prepare the order for dismissal.
2. Submit the order to the judge.
3. File stamp the original and send a copy to the plaintiff.
4. Dismiss on ROA screen in ISTARs with right to refile. (Case may be reopened within 6 months of the original filing date.)
5. Close the case in ISTARs.

8.10 RECORD

A record or recording of any proceeding in the small claims department is not required. IRCP 81(g)

8.11 COSTS ON APPEAL

Costs on appeal shall be awarded in a sum not to exceed fifty dollars (\$50) and shall be awarded to the prevailing party in the appeal. I.R.C.P. 81(p)

8.12 ATTORNEY FEES ON APPEAL OR POST-JUDGMENT MOTIONS

Attorney fees may be awarded by the court on appeal or on post-judgment motions. Rule 54(e). IRCP 81(q).

8.13 SMALL CLAIMS PROCEDURES

Clerical Duties:

1. Give plaintiff a copy of the pamphlet "Information for Plaintiffs in Small Claims Cases" published by the Administrative Office of the Courts.
2. Provide the plaintiff with a claim form to complete. The plaintiff's signature on the form must be witnessed either by a deputy clerk or by a notary public.

Note: Counties must accept forms downloaded from the Internet. If the clerk requires additional time to file stamp and process the Internet forms, the party can be asked to return at a later time to pick up the filed documents.

Counties are not required to send forms to parties free of charge. Advise the callers to send a self-addressed, stamped envelope or to download the forms from

the Internet.

3. Once the Claim Form has been completed and the plaintiff is ready to file a small claim action, collect the filing fee.
4. Place the filing stamp on the document.
5. Assign a Court docket number to the new filing.

Note: If this is a claim that was previously dismissed for lack of service and it is within six months of the original filing, the party should file the claim with the same case number. No filing fee is charged to refile the claim.

6. Plaintiff determines how defendant is to be served. Service must be made by a person over the age of eighteen (18) years of age that is not a party to the claim. Some available choices are: Service via Certified/Restricted Mail, Service by Sheriff's Dept., and Service by a Process Server.
 - A. If the Sheriff or Process Server serves the defendant, provide a copy of the Claim Form, Answer Form, Summons and pamphlet entitled "Information for Defendants in Small Claims Cases."
 - B. If service by certified mail to the defendant, collect postage costs for certified, restricted mail of the entire package. Forward a copy of the Claim Forms, Answer Form, Summons, and pamphlet entitled "Information for Defendants in Small Claims Cases." File receipt of certified mail form in the file.

The original documents are maintained in the court file.

The plaintiff will be responsible to provide proof of service to the Court before the scheduled hearing date.

Note: As soon as the Plaintiff advises you how to proceed with service, the Plaintiff could be excused before you complete the processing of the cases.

7. Build your case.
 - A. Add Plaintiff.
 - B. Add Defendant.
 - C. Print File Label.
 - D. Tickle for proof of service in 30 days.

8. If Proof of Service received, tickle for receipt of answer in 20 days from date of service.
9. If Proof of Service not received:
 - A. Dismiss the case for lack of service in ISTARs.
 - B. Send Order of Dismissal.
10. *If Answer received*, schedule a contested hearing. Complete the Notice of Hearing and send to both parties. Defendant must be served at least fourteen (14) days before the date of the hearing.

Note: If the defendant agrees with the claim, your judge will decide whether to schedule a hearing.

If no Answer received, schedule a default hearing if your county hears default cases. Complete the Notice of Hearing and send to the plaintiff. (Some counties may not hear default cases but require the plaintiff to complete and file an affidavit in support of the claim. In these counties, it is the responsibility of the plaintiff to determine if an answer has not been filed and come to the court to complete the paperwork.)

8.14 TIME STANDARDS

The Small Claims time standards require that cases be resolved within 90 days from filing of the complaint.

8.15 THE HEARING

Plaintiff or an employee of plaintiff must appear and establish the claim by evidence satisfactory to the court, unless the defendant fails to answer and the court is prepared to enter a default judgment on the paperwork submitted by the plaintiff. The Defendant must appear to defend his objection to the claim by evidence satisfactory to the court.

8.16 DISMISSAL OF CLAIM AFTER HEARING

Clerical Duties:

1. Service of the Order of Dismissal on both the plaintiff and the defendant is the responsibility of the Clerk.
2. Service may be made by either personal delivery or by mailing to their addresses determined by the court most likely to give notice to the parties. I.R.C.P. 81(h).

3. Enter the hearing results for the hearing, enter the dismissal into the ROA.
4. Close the Case on ISTARs.

8.17 ENTRY OF JUDGMENT

The judge shall enter judgment in accordance with his/her decision upon a form furnished by the Court. If the defendant failed to appear at the hearing, the judgment may not be appealed unless a Motion to Set Aside Default Judgment is granted by the judge. If the defendant appeared at the hearing, the time for appeal begins to run upon the filing of the Judgment in the clerk's office and not upon the signing of the Judgment by the judge. I.R.C.P. 81(h)

Clerical Duties:

1. If the judgment is in favor of the plaintiff, give the plaintiff the pamphlet "How to Collect a Small Claims Judgment", published by the Administrative Director of the Courts.
2. Upon entry of Judgment, place the filing stamp on the original of the Judgment and file the judgment.
3. Service of the Judgment on both the plaintiff and the defendant is the responsibility of the clerk. Include a Satisfaction of Judgment Form with the plaintiff's copy if the plaintiff prevailed.
4. Service may be made by either personal delivery or by mailing to their addresses determined by the court most likely to give notice to the parties. IRCP 81(h).
5. Complete a Certificate of Mailing certifying the date and type of service and place in the file.
6. Enter the hearing results for the hearing, enter the judgment into the ROA, and close the case on ISTARs.

8.18 WRITS OF EXECUTION, POSSESSION AND GARNISHMENT

A Writ is issued to assist the claimant in collecting on his judgment. The most common ways to execute on a judgment are to *garnish wages*, or to *attach personal property*. Execution shall be prepared by the claimant and issued by the clerk upon request by the successful party.

Execution may not issue until any appeal has been rendered final or the 30-day statutory appeal period has expired. If the judgment was entered by reason of default of defendant, execution may issue immediately as there is no right to appeal. IRCP 81(j). Different

rules apply to appeals from magistrate and district court. For those rules, see the Clerk's Manual section on executions.

Clerical Duties:

1. Collect the fee for issuing the Writ.
2. If plaintiff seeks to execute Judgment against defendant's wages, plaintiff must fill out an application and affidavit for execution indicating if continuous garnishment is required. If so, the plaintiff must provide the name and address of the defendant's employer. Clerk provides the plaintiff with the Writ of Execution and the pamphlet entitled "Collecting on Your Small Claims Judgment."
3. Check to see if a Notice of Appeal has been filed before issuing the Writ of Execution.
4. If a Notice of Appeal has not been filed, issue the Writ. Add in ROA: Writ will automatically say "Writ Issued" and update counties where the writ has been issued.
5. The Writ shall be directed to the Sheriff of the County in which the defendant's wages and/or property are located.
6. "For the Sum of" is the amount of the original Judgment; or if this is a second or third Writ, this should be the amount shown on the Sheriff's Unsatisfied Return of Service.
7. "Cost of Suit" is the total amount of cost to file the current Writ of Execution. Do not include filing and service fees incurred by the plaintiff for the filing of the small claim, as they are part of the Judgment amount entered by the Court.
8. Date, sign and seal the Writ.
9. All fees for issuance, service and enforcement of the Writ of Execution shall be paid by the party enforcing the Judgment and assessed against the unsuccessful party in the same amount.

8.19 SATISFACTION OF JUDGMENT

After the defendant pays the money or returns the property as required by the judgment, the judgment is *satisfied*. After the defendant has satisfied the judgment, the plaintiff **must** file a *SATISFACTION OF JUDGMENT*.

Clerical Duties:

1. Provide the plaintiff with the form to complete.

2. The form must be signed by the plaintiff in front of a court clerk or a notary.
3. File stamp the Satisfaction of Judgment, enter in the ROA and provide a copy to the plaintiff. Send a copy to the defendant.
4. Enter satisfaction in ISTARs disposition screen.
5. File the original.

8.20 FILING AN APPEAL IN A SMALL CLAIMS ACTION

Any aggrieved party desiring to appeal the Judgment in a small claims action shall do so by filing a Notice of Appeal with the Magistrate Division of the District Court within the 30-day statutory appeal period. However, any party who defaults or does not appear at the small claims proceeding shall have no right to appeal the Judgment in the small claims proceeding to the Magistrate Division of the District Court. The Notice of Appeal shall not be filed by the clerk without the prepayment of the filing fee, except as provided by I. C. § 31-3220, Idaho Code. IRCP 81(l).

Any appeal of a small claims judgment of the magistrate division shall be conducted as a trial de novo by a magistrate. IRCP 81(n). Discovery shall be allowed only by written leave of the magistrate. A request for a jury trial must be made within 14 days of the service of the order setting the hearing on appeal. The jury shall consist of 6 jurors or a lesser number as agreed by the parties. IRCP 81(o)(7).

Clerical Duties:

1. Provide the plaintiff or defendant with Appeal on Small Claims Judgment form to complete.
2. Collect the filing fee.
3. Schedule the hearing on ISTARs.
4. Mail the Notice of Hearing to both parties and a copy of the Notice of Appeal form to the respondent.
5. The magistrate may permit or require filing of amended or additional pleadings.

8.21 THE HEARING

At the appellate level, the parties may have representation of counsel. If not, the parties need to be prepared to go forth with Plaintiff or an employee of plaintiff appearing and establishing the claim by evidence satisfactory to the court, and the Defendant appearing to defend his objection to the claim by evidence satisfactory to the court. After a hearing

the judge or jury shall render a decision.

8.22 DISMISSAL OF CLAIM AFTER HEARING

Clerical Duties:

1. Service of the Order of Dismissal on both the plaintiff and the defendant is the responsibility of the Clerk.
2. Service may be made by either personal delivery or by mailing to their addresses determined by the court most likely to give notice to the parties. IRCP 81(h).
3. Enter the hearing results for the hearing, enter the dismissal into the ROA.
4. Close the Case on ISTARs.

8.23 ENTRY OF JUDGMENT

The judge shall enter Judgment in accordance with his/her decision.

Clerical Duties:

1. Upon entry of Judgment, place the filing stamp on the Judgment and file.
2. Service of the Judgment on both the plaintiff and the defendant is the responsibility of the Clerk. Include a Satisfaction of Judgment Form with the plaintiff's copy if the plaintiff prevailed.
3. Service may be made by either personal delivery or by mailing to their addresses determined by the court most likely to give notice to the parties. IRCP 81(h).
4. Complete a Certificate of Mailing certifying the date and type of service and place in the file.
5. Enter the hearing results for the hearing, enter the judgment into the ROA;
6. Close the Case on ISTARs.

8.24 WRIT OF EXECUTION, POSSESSION AND GARNISHMENT

If the judgment is upheld, a Writ shall be prepared by the Claimant. (See Section 6.19.)

8.25 FORMS AND INFORMATION

The Supreme Court has adopted uniform forms for use in Small Claims cases. Other suggested forms are also available for use, as approved. Please see www.isc.idaho.gov

and www.courtselfhelp.idaho.gov for the following:

- Small Claims Forms
- Pamphlets (Plaintiff, Defendant, Collections)
- Informational Video
- List of Mediators
- List of Attorneys
- Links to Other Resources