

How to File a Small Claims Case

Introduction to Small Claims Court

My name is Tom Wagner and I'm an attorney here in Denver. I donate my time through the DBA, the Denver Bar Association. I've been teaching this clinic now not every month, but probably every other month for about a year. I've been practicing law for two years. I do mostly civil litigation, commercial litigation for a firm here in town and my experiences with Small Claims Court as an attorney are a bit limited. I don't do a whole lot of work there myself because Small Claims Court is designed mainly for lay people and not so much for attorneys. But I have taught this class a couple of times and every now again I have an issue in Small Claims Court.

Small Claims Court is a court of law; it is not a guaranteed solution to your legal problems. Small Claims Court is the most accessible of the state courts in Colorado, there is generally, three levels, Small Claims, County Court and District Court. Small Claims Court typically deals with smaller amounts of money. Then moving up the rung to County Court, which involves larger amounts of money, and District Court handles all amounts of money. Small Claims Court is generally limited to claims of \$7,500 or less. County Court is in between, less than \$15,000, and as I mentioned District Court has no limit.

Limitation in Small Claims Court

Small Claims Court is limited also by the type of claim an individual can file. There are certain claims an individual cannot file in Small Claims Court. For example, no criminal claims, no libel or slander claims where someone prints something negative about an individual in a newspaper, they can't go to Small Claims Court. Class actions are not handled in Small Claims Court, no divorce claims, no probate issues such as wills or trusts. And there's no boundary of misdeeds issued in Small Claims Court.

Overview of the Small Claims Court Process

Whether you are planning a claim currently or considering your claim right now the information in the clinic will be useful but probably the best place for information is online. If you have access to the internet the URL is www.courts.state.co.us and there's a self help center on the state court website. There are forms and key information and a lot of your questions can probably be answered there. There is very helpful information on the website. I suggest reading it, it will make a small claims case easier as a defendant, plaintiff or potential plaintiff. Read the rules, they are not that long, not that involved and when you go to court, a judge will expect you to know this information, so it's a good start.

Small Claims Court is a court, held in a courtroom and the court will expect that you treat it with respect. Generally, that means showing up, looking presentable, no cutoffs, no tank tops, sandals are probably not a good idea, no hats, and it will help your case if you show up like you mean business. You don't necessarily have to wear a tie but it probably wouldn't hurt.

Courts move slow, even Small Claims Court, which is the most successful court, you should expect at least a couple of months to resolve your case. Bigger cases that I usually work on take years to resolve.

If you have been shorted in a commercial transaction and you just want your money quickly, you still must wait. It's just part of the process, the courts try to move cases along as fast as they can but you have to expect that things are not going to move as quickly as you would like them to. And often, that pace can work to your advantage; you can prepare your case or find the documents you need to find to make your case better.

Is Filing a Lawsuit the Best Thing to Do?

For most of individuals considering a lawsuit is the most important stage - Is filing a lawsuit the best thing to do? That's the question you want to ask yourself before a claim is brought to the courthouse. There are many things to consider before filing a lawsuit. The least of which are legal factors, you're looking at an investment of time. Generally, as a plaintiff, you will invest hours if not days of your own time, not just coming to court but preparing your case. Digging up documents and writing an outline for your presentation are going to be done by yourself. That's one of the big considerations you have to think about.

The other thing to think about is money, you cannot get reimbursed for time off from work to focus on your small claims case, you don't get reimbursed for travel to the courthouse or reimbursed for parking. That's all something to consider, it's going to cost some time and money and you have to think about if it's worth it. If you're dealing with pride or ego, it may not be worth it. There's a fine line in filing a lawsuit based on pride, it's generally not very good idea. Then you also must think about the money spent actually filing the court case. Small Claims Court is the most successful therefore it's the cheapest in Colorado. But you are still looking at anywhere from \$25 to \$100 in filing fees and that's real money. So if you're chasing down \$100 and spend \$20 filing a claim, you really need to consider, is this worth it?

Then you also have to think about collection aspect of the claim; is the person or company you are suing solvent? Are you going to be able to find them and collect monies that you might be awarded as far as a judgment? It might be that you have to file another lawsuit to chase someone down who doesn't want to be caught. These are all things that you have to consider before even drafting out a claim.

Legal considerations prior to filing a complaint

The other factors to consider are legal factors; can you prove your claim? Do you still have a contract that you drafted on a napkin? Or do you have any other proof that a person or company owes you money or vice versa, that you don't owe that person money? Then you have to consider damages. There's really two pieces of a lawsuit, there's proving that someone owes you money and then proving how much they owe you; and if you're a plaintiff you have to prove both. So you could prove that someone owes you money but, if you can't prove how much they owe you then you are in the same place as you were when you began. These are all things to consider.

You must take into account witnesses, supporting documents; documents generally are better evidence than witnesses because documents don't change their mind. Documents show up when you put them in your briefcase or backpack, witnesses don't always do that. Obviously, the court likes to see things in writing because things in writing don't change unless you erase them and that generally shows up. Memories fade, witnesses change their mind so you have to think about all these things when you make your decision whether to file a case or not.

Using a Demand Letter

Before filing a case, one of the best things you can do, and I recommend that you do, is to draft a Demand Letter and this is not a formal court process but it really helps your formal court process. You put the other party on notice; In other words, you send a Demand Letter saying you entered into a contract with the other party to fix your roof, they showed up one day but the roof was never fixed, you paid them \$500, so where's the rest of my roof? That's obviously a bit simplified but that's the purpose of the Demand Letter. You want to tell the other side that you are serious about the issue; you don't necessarily show the other party all your cards but tell them what you plan on doing. That puts them on notice, it prevents them from saying, 'I don't know, I had no idea this was a problem'.

Your Demand Letter should be brief, it should not include whining or threats, and it should include a brief statement of facts to support your claim. That means you include the date you entered the contract, the date the contract was supposed to be fulfilled, the amount of money involved and the other thing that you should include in the letter is the solution or what you expect from the other party. You have to be willing to compromise a little bit and resolve your differences even if you go to court, that's got to happen. Fighting over a dollar or two here or there may not be worth it. State what you want to get out of your court case in your Demand Letter, state the solution. Include deadlines for a response from the other party in your Demand Letter and make it polite; state something to the effect of, "I look forward to your response by three weeks from the date of this letter, indicating that specific date or set a date that works for your schedule. But give the other party time to respond and think about what you put in your letter. Sometimes the issue is just an oversight and the Demand Letter may cure that oversight.

Give specific actions you are willing to take, the typical action that you are willing to take is to file a lawsuit. But it is illegal to state you are going to file a lawsuit if you are not seriously considering it. Don't make threats except to the extent that you say you are considering filing a lawsuit if you don't hear anything by a specific date or if the other party doesn't respond satisfactorily. Nevertheless, consider alternatives nobody likes to go to court necessarily so often times you can work out a payment plan or something similar with the other party.

The key is to keep the Demand Letter professional, keep it brief and that will get you further than stopping altogether.

As far as the other pre lawsuit or pre filing considerations, I mentioned that you have to consider whether you can collect from a judgment and collection generally boils down to, does the other party have any money? A defendant with no money is considered 'judgment proof', which means that even if you win the case and you get a big judgment that says the other party owes you \$10,000 but that other party doesn't have \$10,000, you're not going to get \$10,000. In county court there are no pain and suffering damages awarded either so this exclusively a monetary judgment and there are no punitive damages. However, if you know that the other side has money and that you can collect on it, it's another process to file a writ of garnishment which allows you to garnish their bank account or wages along those lines. Those are elements you have to consider, do they have a job, do they have a bank account? It may cost you money to find out about this, you might have to hire an investigator to check things out and make sure the company or person you are after has money to satisfy your

judgment. So that's an important consideration and may be the most important consideration aside from your own time and effort.

Filing a Complaint

To commence a lawsuit, you file a complaint with the court. That's different than service, which will be discussed soon. But a lawsuit starts when you write your complaint, file it with the court and pay the required fees. There are a couple of considerations that you have to examine before you file your complaint; 1) venue is the location in the state where you file your complaint. You can only file where the other party lives, works or has an office or business. If you are dealing with a company that is in Denver, you have to go to Denver Small Claims Court even if you live in Pagosa Springs. If you live in Colorado Springs and you have to sue someone in Denver you are obviously going to incur travel costs and time away from work.

The complaint form that you need to use is located online and the complaint is a short plain statement of facts that showed you are entitled to the money; this is not the place for a long involved story. The form looks like this, it has a couple different carbon copies and you'll see that you have about five lines to tell your story. Keep it brief and list your name, the oppositions name and then the situation or reason why this person did or did not do that causes them to owe you money. If you can state that reason in two or three sentences, that's the statement of your claim. You need to know parties names, addresses, phone numbers, you know your own information but it may take a little digging to find out the other party's pertinent information.

In reference to corporations versus people, they are separate. If you worked with Joe's Roofing, Joe is separate from Joe's Roofing Inc. so you have to consider both entities. You have Joe and Joe's Roofing; you may need to sue both of them but you also need to serve both of them and Joe, as I said, is different than Joe's Roofing. Joe's Roofing may be incorporated and have a business in Denver but Joe may live in Arapahoe county, so you need to know both their names and addresses.

The corporate information is fairly easy to track down on the Colorado Secretary of State website, the Secretary of State website is www.sos.state.co.us and there is a business records search that allows you to find all the information on the corporation or LLC that you are looking to sue. When you begin dealing with corporations or LLC's you start involving registered agents for service of process. That may or not be the individual Joe in the case of Joe's Roofing, it could be Joe's attorney, it could be the corporation's service company which is a corporation that specializes in accepting service and that's who you will serve when referring to service of processes.

Another thing to consider is, if the defendant is in the military, it might not be a common situation but it alters the service of process. Obviously if someone is in Iraq or somewhere else it's a little more difficult to serve them but that is not part of the scope of this presentation but is something to consider if you are going to file a complaint.

When you file a complaint, you will pick a hearing date and time, no less than 30 days from the date you filed the complaint and the date you choose will be your trial or hearing date. So you obviously need to make sure you aren't on vacation or required to attend a work function you can't get out of. You must also pay the filing fee, if the claim is \$500 or less the fee is currently \$20, if claim is over \$500 but less than \$7500, the fee is \$44 and that's just to file a claim with the court. If you are a

defendant, you must pay to defend a lawsuit in Colorado, the fees range from \$15 to \$30 and if you file a counterclaim the fees are similar to filing a claim, which are \$30 or \$35.

Service of Process

When you file a complaint, you set your hearing at least 30 days from the date you filed your complaint, then the next hurdle you have to accomplish is service of process. Whereas filing a complaint you file with the court, service of process refers to getting that complaint to the other side or party. Service of process is a big deal in the U.S., the essential element to it is that it gives notice to the other side that they are being sued. It's a formal notice, you can't serve someone by calling them, leaving them a voice mail and saying, 'and by the way I sued you. You've been served.' That doesn't work. As I mentioned earlier, to get a default fault judgment you have to properly serve your opposition. Bad service or improper service means no service at all. And to reiterate, if you just call someone and leave them a voice mail that is not going to do it.

You must serve your opposition at least 15 days before the hearing date. In other words, if on Feb. 29th you file your complaint and set your hearing date for April fools day (that's 30 days away) and then try to serve your opposition on March 29th that will not work. You need to serve the opposition 15 days before the hearing date to give them time to prepare and maybe time for you to negotiate.

Options for Service

There are a couple different options for service since service can be tricky especially if someone knows that you're about to sue them. They aren't going to make it easy for you to sue them, so set your hearing date with the thought that it may take you a couple of weeks to accomplish service. You might have to find that person or pay someone to find that person. So options for service include, you can send them certified mail; it's cheap but very risky. As mentioned previously, bad service means no service, so in sending certified mail, if the person doesn't open it or avoids it or something goes wrong you have no service and you are left standing there waiting, doing nothing. So service by certified mail is not recommended, it's allowable but strongly discouraged.

A Sheriff can serve process, they are two rungs up the ladder from sending someone certified mail. It's a legitimate way to serve someone, it will work but it's not necessarily the best way. Sheriffs are usually busy and have other things to do; service process is not high up on their list of priorities. Service of Process done by a Sheriff costs \$37, it's a bit more expensive than certified mail but certainly cheaper than a process server. However, Sheriffs do their Service of Process duties during business hours, they're not going to aggressively pursue someone who doesn't want to be served. So if serving the other party means tracking them down at 9:30 at night after they've eaten dinner and before going to bed the sheriff is probably not your best bet in that situation.

A private process server is the better option in that situation. Unfortunately, it is the most expensive option and the fees vary widely. Generally, the fees are based on how far they have to drive or depending upon how fast you need it, maybe a couple of hundred bucks, possibly a little bit more depending on where they have to travel. But a private Process Server is the best option, look for one online or check the yellow pages for process servers, they know what to do. There are some not necessarily tricky rules, but rules you have to follow when serving someone. Process servers serve people for a living, so they know what they are doing, they fill out forms correctly. You can call a

process server to serve Joe's Roofing and they can verify service occurred and provide the return of service affidavit. That's probably the best option but unfortunately Process Servers are expensive.

Another option is to get a friend to serve the process. A friend must be over 18 and not related to either party. It obviously helps if the friend has served someone before but the affidavit of service must be filled out correctly otherwise you give bad service which is why process servers are best. The affidavit of service essentially says, 'I served this person and I served them properly.' When dealing with a friend whom you asked to provide service, they may not fill it out correctly which may negate your service which may negate your lawsuit. These all describe personal service which is the best way to initiate your lawsuit. There is such a thing as substitution of service which is probably the most risky way of initiating your lawsuit with another party. Substitution of service offers a couple of different options, you can leave a copy of summons and complaint at the "usual place of abode" which generally means house or something like that, and you can leave it with a family member over the age of 18. If you are trying to serve Joe's Roofing and you go to Joes' house and Joes' 8 year old daughter answers the door that's not going to work. Joes' 35 year old wife answers the door that's better. Still, process server or personal service is best. You can leave the copy of the summons and complaint at the usual place of business with bookkeeper or keeper of records or chief clerk over the age of 18. If you go to Joe's Roofing and find Joe's book keeper or chief clerk and serve that person, they must be over 18.

If you are dealing with a partnership which is a unique corporate format, you can serve any partner in a partnership. So if Joe's Roofing is a partnership between Joe and his brother Ralph and they're both partners then you can serve either one of them. Then it's important if you are suing a corporation, you serve the registered agent for service of process. The registered agent information can be found on the Secretary of State website which is free. So use the secretary of state website to find the registered agent for service of process. As an example, Joe's Roofing Inc. might designate Ralph as the registered agent for service of process. So when you go serve Joe at his house you have him taken care of, but Joe's Roofing is not taken care of. You need to go to Ralph and serve Ralph which acts as service on Joe's Roofing Inc. so it's details to consider.

The servee, the person who's being served can't deny service if it's done properly, the magic words are, "you are being served with a complaint." The server cannot just throw papers at the other party; they have to indicate they are serving the individual and if person refuses service that's their problem as long as the server is doing it correctly. You can't nail a complaint to the door and then run away. But if you serve the person correctly and they say I don't want anything to do with this and then run away the burden is now on them. It all boils down to hire a process server and they will do everything correctly.

Filing an Answer

After you have filed your complaint, served process, then you start considering the other side of the equation which is the defendant's answer. If you're a defendant, you must file an answer and pay the filing fee.

In Colorado, to defend a lawsuit, the fee is \$15. If you answer without filing a counter claim and the amount involved is under \$500, the fee is \$15. For a claim that's over \$500 but less than \$7500, the fee is \$30. If you file a counterclaim the fees go up a bit around \$20 or \$35 depending on the claim but again are based on the \$500 cutoff.

So you file your answer with the court and you can file your answer on or before the trial date or your hearing date. So if your hearing date is set for April fools day you can file your answer on March 29 and/or April fools day.

Q: What if the other party doesn't file an answer?

A: If the other party does not file an answer and/or show up to their trial date and you've (probably?) served them then you are looking at a default judgment. But again the key is making sure they get the proper service.

Filing a Counterclaim

When you file an answer, you can also file a counterclaim. A counterclaim essentially is a claim against the plaintiff that arises out of the same occurrence or the same facts as what the plaintiff makes their claim on.

Counterclaims must be below the jurisdictional limit of Small Claims Court. In other words, you can't be sued for \$500 and file a \$50,000 counterclaim in Small Claims Court. If you want to file your counterclaim for a larger amount, you move up the ladder in the court system. When you move up in the court system, the filing fees increase, the complexity of the case increases, you start considering discovery and involving lawyers. If you're considering filing a counterclaim, again it must be out of the same transaction. Generally, that means the same contract or same project in reference to the Joe's Roofing example.

Limitations to a Counterclaim

You can't add new parties with a counterclaim in Small Claims Court; your counterclaim must be against the plaintiff. And you cannot have already sued someone and then add a counterclaim again. In other words, you can't redouble your efforts or you can't sue someone twice for the same claim. If you don't raise your counterclaim when you file your answer you may have waived it, which means you can't bring it again. If you get served with a complaint and you think you may have a counterclaim against the complaint definitely think about it, because if you waive it, you won't be able to assert it again.

In reference to an original complaint, rather than a counter claim, if you have a claim that is in excess \$7500 but you want to stay in Small Claims Court, your recovery will be limited to \$7500. Maybe you're counter claim is for \$8000, but its not going to be worth going to County Court , possibly hiring a lawyer, thus slowing down the process even more. That's a decision you have to make, is that \$500 worth moving up to the next level of the court system, that's one thing to consider.

Defendants Right to an Attorney

As a defendant, you have the right to an attorney and you must fill out a form at least seven days prior to your hearing. If you bring in an attorney as the defendant, that means the plaintiff can then bring in an attorney and you'll get bumped up to County Court but Small Claims procedures will still apply, it's kind of a hybrid process.

To reiterate, plaintiffs in Small Claims Court cannot file their case with an attorney. Defendants have a right to hire an attorney, but they must file a form with the court 7 days before their hearing date

indicating to the court that they hired an attorney. When a defendant hires an attorney, the plaintiff can then hire an attorney. The defendant is not required to hire an attorney, but when a defendant does hire an attorney and notifies the court that he/she has done so, it opens the door for the plaintiff to bring in an attorney. When attorneys enter the mix, your case isn't truly, bumped up but a County Court judge will hear the case versus a Small Claims magistrate. Small Claims procedures will still apply and the jurisdictional limit will still apply but there will be attorneys involved.

Attorneys are expensive, but if you don't have time to deal with a case as the defendant there are a lot of attorneys out there that do a lot of work in Small Claims Court. They can help take care of your case, but you still have to participate you are the client now versus the client and the attorney but again, it's something to consider. So you have a right to an attorney as a plaintiff in that case. If the defendant's lawyer-up and you as a plaintiff want to lawyer-up it's not a bad idea. It's not required, but lawyers do this for a living so they are aware of the rules and they're experts, they know rules of the trade that you may not be aware of; it's a more comfortable procedure. But an attorney is an expense and if as a plaintiff you are hoping to recover something while not spending a whole lot of money by hiring someone - it's something to consider. Bringing in an attorney it's not really what Small Claims Court was designed for, it goes into that whole consideration of whether to file a lawsuit or not - You may end up a bigger lawsuit on your hands than you first set out to file.

Settlement

As a defendant or a plaintiff you should always be thinking settlement. There's a whole strain of thought on the idea of filing a lawsuit is simply to force the other side to the table to start talking. Whether that table is in front of the judge or possibly a court required mediator, it's something to think about. The judge may require that the parties split settlement costs the day of the hearing. The goal here is not to stick it to the other party, your goal is to recover the money that is owed to you or to defend yourself against the claim, court is not a place for pride or ego; so you should always be thinking settlement.

If the decisions that lawyers make every day are whether to go to trial or to settle, if you as a plaintiff have an offer from the defendant to settle for \$500 but you know you are going to win at trial for \$1000 it might be worth going to trial. If there is a question as to whether you are going to win any money at all then settlement is the better way to go. It all depends on the risk you want to take.

A settlement is definitely encouraged by the court and there are programs, specifically mediation programs which are simply structured settlement talks with an outside party who may help both sides arrive at suitable settlement amount. Generally, begin with the plaintiffs' request, say \$1000 the defendant says, 'no \$500', the odds are they are going to end up somewhere in the center of that. Mediation is something to think about and that should be your primary goal, to settle your case for an amount you can live with.

If you do settle your case before the hearing date with the other side, put it in writing. That is crucial, then you have a contract, if the contract is breached you can go back and say they promised to pay me \$2000 for this settlement and they didn't, so the written settlement is a big thing. When you do get your settlement contract in writing, you can go to the court and get your lawsuit dismissed. You don't have to go to trial after you have your settlement. If you think you have settled get it in writing, don't

let things slide make sure you cover your bases with the court because they won't know if you settled if you don't tell them.

Preparation for the Hearing

So we talked about how a lawsuit starts the initial steps, the answer and service of process. We'll now move into the actual hearing and presentation and it might not be the exciting part but its how you make a case. It requires a lot of preparation for a very short amount of time. Preparation is key for two day jury trial, you can spend months and months preparing. You don't have a jury in Small Claims Court, but you should still prepare like you are trying it to a jury or magistrate and the more prepared you are when you show up for your hearing date, the better off you are going to be. Long story short, you want to tell a good story that doesn't mean going off on tangents and that doesn't mean focusing on irrelevant facts. Similar to the complaint, it has four lines so you'll have 15 to 20 minutes to tell your story and that's about it. You've got to think about how to tell the story that Joe's Roofing gave me an estimate, showed up, did one day of work and never showed up again. You've got to tell that story in a short amount of time and tell the judge how much Joe owes you. It's kind of a three step process you go through, you set out your facts, set out why the other party is liable and you tell the court about your damages. Damages are how much money is at stake or how much money you are owed.

Conversely from the defendant's side, you tell your portion of the facts make sure you find key facts that support your interpretation. That doesn't mean standing up there saying he said/she said, that won't get you anywhere. Then on the defendants' side you say, 'I'm not liable because . . . and/or I don't owe this money and if I did owe this money this is how much I will pay out.' It's kind of a tricky line to say, 'Yes, I admit that I, Joe made a contract to re-roof Toms house but the contract was for \$200 not \$2000 and here's why.'

And as a plaintiff, you have to consider what the defendant is going to say to the same affect. A chronological version of the story is generally better than a rambling narrative; it makes it easier to layout in your mind and easier for the judge to digest. They hear lots of these cases and I hate to say it, but they probably aren't going to do a lot of outside investigation of your claim, they are busy people. Prepare a written statement that you can follow along and make sure it tells your side of the story, the facts, liability and damages; causation is a key, you have to show that the defendant's acts caused your damages. Typically with a contract, it's a little easier but if you are dealing with a car accident or the defendant rear ended you and banged up your bumper, then you may start discussing some interesting facts about causation. Did you make an illegal U-turn or something similar? Either way, you have to show the defendant is responsible or at fault that for any money or damages that you incurred, it's a crucial element of any claim that you present. When you start talking about what you are going to do, make your outline or written chronology that you can follow and beyond that you're going to start thinking about witnesses.

Witnesses

As I mentioned earlier, witnesses even if you know them and have prepared them, are live individuals and can shift. Documents don't shift but sometimes all you have is a witness and you need a witness to corroborate your story. Make sure that you prepare these individuals and inform them as to when your hearing date is, it might be a good idea to drive them to the court yourself, so that if you are at the courthouse, they're there as well. Even if you think that they are on your side or you know that they

are on you're on your side, if they're your friend, your business partner, there are other things in life that generally come up and may be more important than your Small Claims Court case.

Witness testimony should focus on the facts more so than opinions. What did I see that day? What did I hear that day? What did I taste that day? More so than, 'Man, I really thought guy was a jerk' that's not going to get you damages. Better testimony would be, 'yes, I heard Tom say don't let the witnesses talk about their opinions.' Instead of, 'it sounded like he was saying don't do this, don't do that, but I wasn't really paying attention'. The more concrete testimony the better, it's less open to interpretation. You also have to expect that your witnesses are going to be cross-examined, that other side has the right to cross examine. If the witness does not have a very kind opinion of you, it may not be worth bringing that person in. Best way to prep your witnesses is to go through things before hand, they don't get paid for their time off from work and you don't get paid for that preparation time. That's one thing about witnesses are notoriously expensive. Each witness will prepare their own statement and you got to make sure what they say is useful to you. You don't pile on cumulative evidence of the same fact, even if it's useful fact. Judges can error, if you have a document that says the same thing and the witness says the same thing don't bring in another document and another witness. If you have one witness or one document that could establish the fact, use your best one don't use three when one will be useful.

Subpoena

If you have a witness who isn't keen on showing up you do have the ability to subpoena them. This means in essence, you must order them to show up and give testimony. But that's a decision that you may want to seriously think about. If you have to order the person to show up to court that day, do you really think that they're going to give you testimony that's helpful to you? That is about the only mechanism of 'discovery' that you have in County Court, you can subpoena a witness or documents and that means its similar to getting a court to order their function for use in the case, and it's a bit tricky. You are going to have to get the witness served, practically again, if you have to subpoena someone and you want them to show up to testify for you, so that's something to consider.

To get a subpoena, you must use a different form; you can't just show up at someone's office and say, 'I subpoena you'. If a witness is a no show, that may get you a continuance. If you subpoena someone and they don't show up, the court may say, 'you've subpoenaed the individual and they haven't shown up, now they are in trouble' but they may not.

As mentioned before, the best way to get a witness to show up is to drive them there yourself. Subpoena, there are two types of subpoenas, one to get a person to show up and one to get documents. You can subpoena both if you want someone to testify about the documents, which often happens. A subpoena for documents is probably more useful with a subpoena than for a witness. Again consider the cost, anytime you start dealing with subpoenas and outside individuals, you start increasing your costs. Be careful of hearsay which is an out of quote statement. If a witness writes something down and says, 'this is what I said' probably not going to get a whole lot of review from the judge. A written statement can be cross examined and that's kind of a classic in English law is that you cross examine people who you don't think are telling the truth, you can't cross examine a statement that is told out of court.

After you get all of your witnesses lined up and you get your presentation written for yourself, practice it. Know your timing, get a mock judge to ask you questions about your case and that will help you. Then when you go to court you will be prepared and not doing what I'm doing which is looking at my notes and overall you'll know your case better. On the day of your hearing, show up, look professional, be prepared and bring copies of all the documents that you have. If you have something that's hand written and it's in your own handwriting make a copy of it, keep the original so you can hand it to the clerk and the judge, or the other party. Generally, what you use in court the other side will have the right to look at so they can make argument on it - that's the idea of cross examination.

The Small Claims Hearing

As I mentioned, your hearing is quick and your emphasis should be on the facts not the law. You are there to tell the judge that fact A happened, fact B happened, fact C happened and therefore that means that Joe's Roofing owes me \$2000. Don't worry about going to research case law, that's not really your job. If you want to hire an attorney to do that, but the key thing for you is to be clear, concise and don't try and muddy up your presentation with legalese. Don't use Latin; don't use the old law English that you sometimes hear and you'll get a lot further.

So follow your outline and make sure you get your key points across, be concise. You want to be sure you include everything but the judge may say, 'you're done', so make sure you say everything in that short amount of time. When the judge says, 'you're done', that's when you get to sit down and be quiet and if you haven't told the court your entire story you aren't going to get to tell the entire story. Again, it's a place to be professional; insults and whining don't go very far, the facts and logic of your case will get you where you need to be.

As far as actually arguing against the other side, its best if you can anticipate what they are going to say but don't make that the focus for your case. Let them argue your case but don't argue it for them and you'll get a lot further. It obviously makes your argument stronger if you can anticipate what the other party is going to say. It doesn't help your argument to say that the other side is going to say such and such, just tell the court your side of the story and let them screw up their side of the story for you. As I mentioned, it doesn't help if you try to talk like an attorney, your main job is clarity and you will get further speaking in a tone that comfortable for you. That's kind of your presentation; obviously you have witnesses or documents you will want to practice integrating them into your presentation. The judge may ask you some questions; it's not like its high school speech class. You may get some questions, so you have to think about what kind of questions will be asked and good answers for them. You might get about 15 minutes for question and answers maybe, you might get a little more; you might get a little less.

Collection

After you've won your case as a plaintiff, you get a judgment and collection is a whole other animal and there is a seminar similar to this one on collection. I don't know a lot about collection but you'll have to file a written note of garnishment. You're looking for assets, so generally you look for bank accounts, property or wages. It's a whole other court process to get all that collected.

The court will not find a person, then collect the money and cut you a check. All the court is allowed to do is say, 'Joe's Roofing owes Tom \$2000, here's the piece of paper that legally entitles him to go chase down Joe's Roofing for that \$2000' in order to recoup the money you are owed. The court will

not order Joe's Roofing to come back and fix your roof or fix your car or replace the stove, those kinds of things - you'll get an order for money and that's it. You can then take that money go pay someone to fix the roof or fix the stove or car, or any of those things, you're not going to get an order directing someone to do physical labor. There's no situation like in a Seinfeld episode, where he gets ordered to be a butler, that's not going to happen.

When you start talking about writ of garnishment that is another document which is issued by the court and you can begin to garnish wages, bank accounts and assets. It's kind of a pain, but if you have someone who owes you \$7500 bucks, that's what you have to do unfortunately. You can look at the flip side of it, if things were easily garnished, there would be a lot of people trying to garnish wages. So garnishment takes some work, you may have to file or serve financial interrogatories which are questions directed to the other party about where their assets are located and what kind of job that they have or who they work for. After finding this information, you can then go and file a writ of garnishment. If they don't answer the interrogatories then they are in trouble, but there is some work on your end to track down the individual who owes you a judgment.

Motion to Set Aside Default Judgment

If as a defendant, you don't show up and you get a default judgment against you, you have 30 days to file a motion to set aside that default judgment. But don't expect it to happen automatically. It would be tough to get a default judgment set aside. If you say, "yea, I didn't show up at court because I was sick that day", odds are that is not going to fly. Had you said, "I was in a car accident and I broke my neck on the way to court", that is obviously a little different. Don't miss your court date.

If you can't show up to the hearing date that has been set, call the court before hand and try to set another date. Scheduling issues are resolvable, just blowing it off is not. In the mean time, during that 30 day window, as a plaintiff, you can start your collection efforts. So if the defendant doesn't show up on the day of the hearing, you can start collecting as soon as you can. Just be aware and on the look out that the defendant may file something to set a side the default judgment, for instance they were in a car accident or circumstances along those lines. The most common and probably successful motion in which to set aside a default judgment is based on bad service.

Appeal

You can appeal a judgment; there is a 15 day deadline to appeal. Obviously, you don't want to appeal if you win, but if you lose, you can appeal. You have to assign an error of law or error of fact. That doesn't just mean that I'm right and the other party is wrong. When you start talking about appeals, judgments from lower trial courts rarely get overturned, it's not common. You begin to talk about an increase in costs and need provide a transcript to be reviewed in court.

When you go to District Court you are opening up yourself to discovery, questions and possible depositions and a whole new world of delay and costs. If you really feel that you've been wronged and you want to file an appeal, it's obviously your right to file an appeal. But you are then really going to have to cross your T's and dot your I's and show why the lower courts wrong and you've got to be prepared for what may be a slow and expensive battle.