

# **ALASKA SMALL CLAIMS HANDBOOK**

**October 2010  
Alaska Court System**

**The forms mentioned in this booklet are available at all state courts  
and on the court system's website: [www.courts.alaska.gov/forms.htm](http://www.courts.alaska.gov/forms.htm)**

**SC-100 (10/10) (green cvr)**

**Prepared by the**

**Alaska Court System**

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# Chapter I

## INTRODUCTION TO SMALL CLAIMS

### A. What is a Small Claims Case?

A small claims case is a simplified type of court case in which a person can attempt to recover money or personal property worth \$10,000 or less. If your claim is over \$10,000, you can still use small claims court but you must give up the right to collect the amount over \$10,000. The \$10,000 figure does not include interest or court costs.

You do not need a lawyer in a small claims case, although you may have one if you wish. Small claims court may only be used if all parties agree to use this simplified procedure.

Small claims procedure may not be used for any of the following:

- 1) disagreements about title to real property
- 2) actions to recover possession of real property
- 3) evictions
- 4) claims against the State of Alaska or the United States government
- 5) injunctive relief (a court order requiring a person to do or not to do a specified act)
- 6) actions to foreclose or enforce statutory, common law or possessory liens

This booklet explains small claims procedure. It is based primarily on the district court rules established by the Alaska Supreme Court. A copy of these rules is included in Appendix A.

### B. The Choice: Small Claims Procedure or Formal Procedure.

If you choose not to use small claims procedure, you can file a formal civil suit. But, if you do so, you will have to follow the more complicated formal Rules of Civil Procedure, and you will probably need a lawyer. See the chart on page 3 for a comparison of these two types of procedure.

### C. Who Can File a Small Claims Case.

Anyone 18 years of age or older may file.<sup>1</sup> A person under age 18 is allowed to file only with the assistance of a parent or guardian. Partnerships, unincorporated associations, limited liability companies, and corporations may also file small claims cases.

### D. Who Can be Sued in a Small Claims Case.

The following may be sued:

1. Persons 18 years of age or older. Persons under age 18 may be sued through their parent or legal guardian. Note: If the person is outside Alaska, the person usually cannot be sued in small claims court unless a district court judge, rather than a magistrate, presides over the case. This is because a magistrate may not preside over a small claims case if the documents opening the case are delivered to the defendant outside the state, except in the situations listed in #3 and #4 below.<sup>2</sup> See page 13.
2. Partnerships, unincorporated associations, limited liability companies and corporations doing business in Alaska.
3. A landlord residing outside Alaska (see AS 34.03.340).
4. A nonresident owner or operator of a motor vehicle involved in an accident in Alaska (see AS 09.05.020).

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<sup>1</sup> District Court Civil Rule 14 and AS 25.20.010. This age limitation does not apply to children who have gone through court emancipation proceedings under AS 09.55.590 or who are considered to have reached the age of majority under AS 25.20.020.

<sup>2</sup> AS 22.15.120(c)

## **E. How to Start a Small Claims Case.**

The one who begins the case is called the **plaintiff**. Procedures for the plaintiff are in Chapter II, page 5.

## **F. How to Respond to a Small Claims Complaint.**

If you have received a small claims **Complaint**, you are the **defendant** in the case. Procedures for the defendant are in Chapter III, page 18.

## **G. Forms.**

You can get small claims forms from your district court at no cost. Many of the forms are also available on the web at [www.courts.alaska.gov/forms.htm](http://www.courts.alaska.gov/forms.htm)

## **H. Lawyers.**

Most people who file or defend small claims cases do not use lawyers. Small claims procedures are designed to be used without a lawyer, but you can be represented by a lawyer if you wish.

Sometimes it is difficult to decide whether you should hire a lawyer. Some cases involving only small amounts of money or property can be complicated. If you are unsure about whether you should hire a lawyer, it is a good idea to talk to one about your case before you decide whether you can handle it alone. If you do not know a lawyer, you can call or write:

**Lawyer Referral Service  
Alaska Bar Association  
P.O. Box 100279  
Anchorage, AK 99510-0279  
Phone: 272-0352  
or  
800-770-9999 outside Anchorage  
(toll free within Alaska)**

If any party in a small claims case requests formal rules, each party should talk to a lawyer.

## **I. A Special Situation When Lawyers are Necessary.**

There is one kind of case in which the District Court Civil Rules require that the person filing the suit be represented by a lawyer. This is a suit to collect an **assigned claim**. District Court Civil Rule 15(c). An assigned claim is one in which a person having a claim has assigned (given or sold) this right to another person or to a collection agency.

Another situation in which you may find it necessary to consult a lawyer is if you sue a person under age 18, a mentally incompetent person or a person in the active military service. There are special laws protecting these persons from default judgment as explained in Section F.1. on page 15.

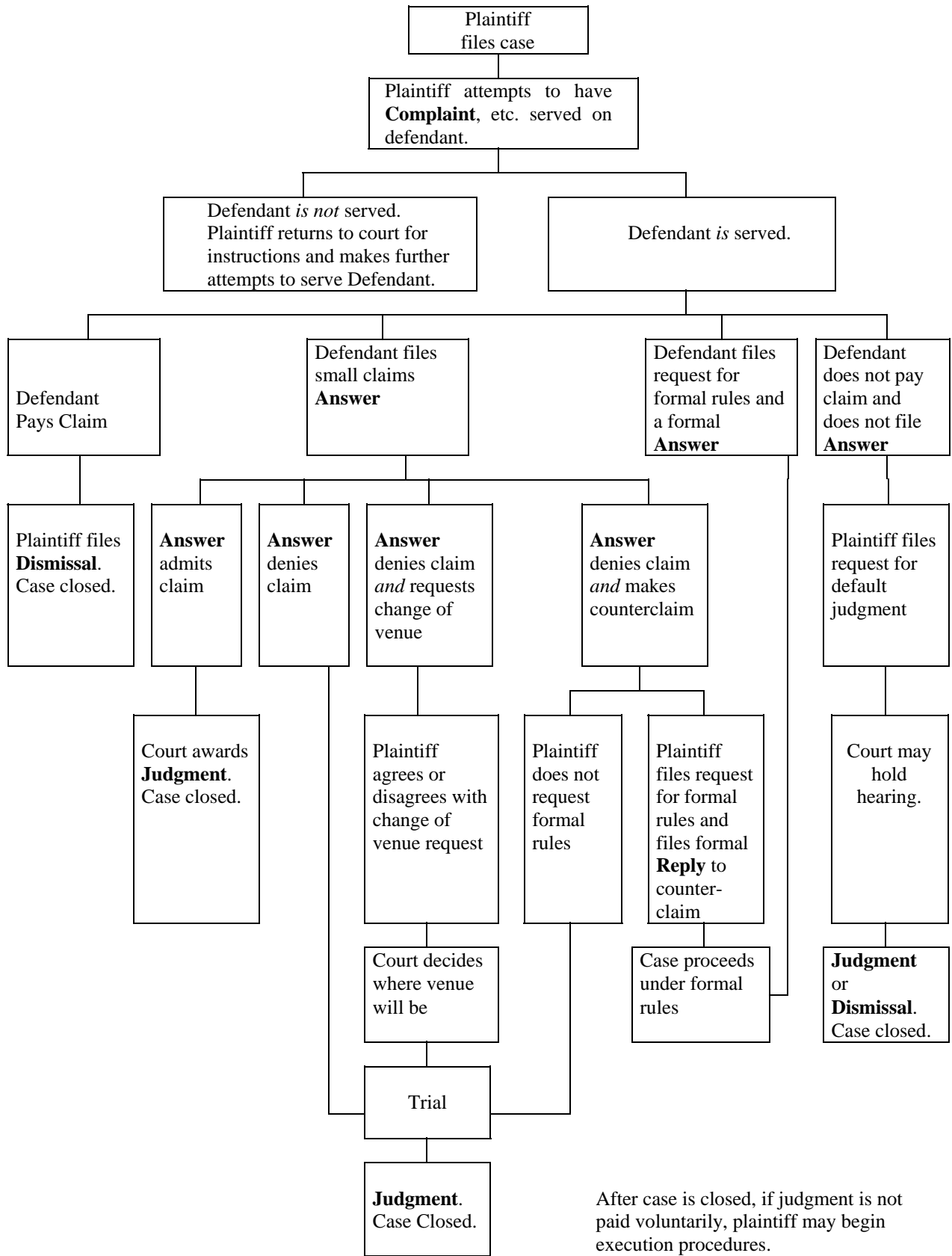
## **J. Can Someone Other Than a Lawyer Represent You in a Small Claims Case?**

No. Only lawyers (or legal interns) may represent other people in court. (The one exception to this is that a person under age 18 may be represented by a parent or guardian.) Even though you may have given someone a power of attorney allowing that person to act for you in certain business transactions, a power of attorney will not enable a person to represent you in court. A power of attorney may authorize you to sue on behalf of another person, but you must retain an attorney to do so. Christiansen v. Melinda, 857 P.2d 345 Alaska (1993).

## COMPARISON OF PROCEDURES

	<b>SMALL CLAIMS</b>	<b>FORMAL CIVIL</b>
Filing Fee	\$40 if your claim is for \$2500 or less  \$75 if your claim is for more than \$2500	\$90 in district court
Jury Trial	no	yes, if one is requested
Need for a Lawyer	usually no	usually yes
Formal Rules of Evidence at Trial	no	yes
Forms Supplied by Court	yes	no
Cost of Serving Process on each defendant		
-by Certified Mail	Postage plus \$4. (Plaintiff gives court stamped envelope addressed to defendant and completed postal forms. Court handles mailing.)	Postage. (Plaintiff handles mailing.)
-by Process Server	usually \$65	usually \$65
Service of Process Outside Alaska	Allowed in cases being heard by a district court judge. Dist. Ct. Civ. Rule 11(a)(4), AS 22.15.120(b)  When case is being heard by a magistrate, then allowed only as provided in:  - AS 34.03.340 (service on nonresident landlord in Landlord-Tenant Act case), and - AS 09.05.020 (service on nonresident owner or operator of motor vehicle involved in accident in Alaska).	Allowed.
Complexity of Procedures	There are approximately 15 to 20 court rules governing small claims procedure.	There are over 80 court rules governing formal civil procedure.
Estimated Time Before Trial	4 to 12 weeks after answer is filed.	6 to 10 months after answer is filed.

## Sequence of Events in a Small Claims Case



After case is closed, if judgment is not paid voluntarily, plaintiff may begin execution procedures.

## Chapter II

### HOW TO START A SMALL CLAIMS CASE

#### A. Before You File.

You must always ask the defendant for what you want before you sue. It helps if your request is in writing<sup>3</sup>. Your problem may be solved if the defendant decides to give you the money you are owed or return the personal property rather than face a lawsuit.

It is not expensive to file a small claims action. However, if you lose, you will lose your court costs, and you may also have to pay the defendant's court costs. Lawsuits should not be used merely to harass people.

If you believe you have a good claim and can prove your case, you should file the suit. The question you should ask yourself is whether you can show the judge facts which will prove your case. The facts can come from your own testimony, the testimony of other people, documents, pictures, and even the testimony of the defendant, whom you can call as a witness and force to answer questions under oath.

An important thing to consider before you decide to sue someone to collect money is that the court will not actually give you your money if you win. All the court will give you is a **Judgment** stating that you are entitled to collect the money from the defendant. If the defendant does not pay voluntarily, you must use another court procedure called "execution procedure" to attempt to enforce the **Judgment**. This procedure will only be successful if the defendant has money or property which can be seized to pay the **Judgment**. For more information about execution procedure, ask the court clerk for a copy of the booklet *Execution Procedure for Judgment Creditors*.

#### B. Filing Procedures.

##### 1. Where to File.

District Court Civil Rule 12 requires you to file your case "at a place which will not cause *unnecessary* expense or inconvenience to the defendant." It allows only three alternatives:

- a. The district court nearest where the defendant lives or works is always a proper place to sue.
- b. If the defendant caused you personal injury or damaged your property, you can file suit where the injury or damage occurred.
- c. If you are suing a business, any place where it does or solicits business is a proper place (for example: where it has a store or an office or sends salesmen).

##### 2. How to File.

Get the following forms from the court or the web at [www.courts.alaska.gov/forms.htm](http://www.courts.alaska.gov/forms.htm):

- a. **COMPLAINT** (form SC-1)
- b. **SUMMONS** (form SC-2)
- c. **ANSWER** (form SC-3)

Fill them out as explained in section C below. If the court gives you any cards or envelopes, fill them out as described in the instructions provided.

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<sup>3</sup> In some cases the law *requires* you to make a written request. For example, the statute which creates civil penalties for issuing bad checks requires the plaintiff to make a written demand (as defined in the statute) for payment at least 15 days before filing suit. AS 09.68.115.



File the completed forms at the proper court. Pay the court filing fee (\$40 for a case making a claim for \$2500 or less; \$75 for a case making a claim for more than \$2500) and service of process fees (see section D, page 13).

## C. How to Fill Out the Forms.

### 1. Complaint

See the sample **Complaint** form (SC-1) on the opposite page. Please type or print when filling out the form. Use black ink.

- Ⓐ Write the name of the city where the court is located.
- Ⓑ Write your name. See NOTE ABOUT NAMES below.
- Ⓒ Write defendant's name. See NOTE ABOUT NAMES below.

NOTE ABOUT NAMES: It is *very* important to name the plaintiff and defendant correctly. If you list the defendant's name incorrectly, you may not be able to collect any money even if you win your case.

To decide how to list the defendant's name, first decide who is responsible for the injury to you. It may be an individual person or several persons or a business or, perhaps, both a business and one or more individuals.

If you decide to sue more than one defendant, you must name each defendant separately. For example, if you intend to sue both John Smith individually and XYZ corporation, you must list both as defendants and serve each of them with a **Summons**.

Example: JOHN R. SMITH, individually; and XYZ, INC., an Alaska corporation.

If you decide to sue a business, you must find out whether the business is a corporation, a partnership, or another form of business. You need to know this in order to name the business correctly on the **Complaint**.

#### 1) PERSONS

You must list a first and last name for each party. Include middle names or initials if known. Spelling must be accurate.

NOTE: If you want to sue a husband and wife, name each one separately and serve each with a **Summons**. Do not name them "Mr. and Mrs....".

Example: JEFFREY T. WILSON and MARY J. WILSON

#### 2) CHILDREN

If the plaintiff or defendant is under age 18, both the minor and a parent or guardian must be named on the **Complaint**<sup>4</sup>. District Court Civil Rule 14 requires minors to appear through their parents or other guardians.

Example: TOM SMITH, a minor, through his parent, JOHN R. SMITH.

NOTE: If you are suing both a minor *and* the minor's parent, you must name them separately:

Example: TOM SMITH, a minor, through his parent, JOHN R. SMITH; and JOHN R. SMITH, individually.

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<sup>4</sup> This does not apply to children who have gone through court emancipation proceedings under AS 09.55.590 or who are considered to have reached the age of majority under AS 25.20.020.

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT \_\_\_\_\_ (a)

\_\_\_\_\_  
(b)

\_\_\_\_\_  
Plaintiff(s),

vs.

\_\_\_\_\_  
(c)

\_\_\_\_\_  
Defendant(s)

CASE NO. \_\_\_\_\_ (d) SC

COMPLAINT

(e)

Plaintiff  is a corporation that has paid its taxes due the state and filed its required reports.  
 is not a corporation.

Defendant is indebted to the plaintiff in the principal amount of \$ \_\_\_\_\_ (f)  
plus interest and court costs as a result of \_\_\_\_\_

\_\_\_\_\_ (g)  
which occurred at or near \_\_\_\_\_, Alaska,  
on or about \_\_\_\_\_.

(h)

Plaintiff has demanded relief from the defendant, but defendant has failed to comply. Plaintiff requests small claims procedure, gives up the right to a jury trial and formal procedure in this case, and waives all of this claim which exceeds \$10,000. If the court enters an order applying the formal Rules of Civil Procedure rather than the District Court Civil Rules to this action, this waiver shall be null and void. This action is filed at a court which will not cause unnecessary expense or inconvenience to the defendant and is the court nearest to: (Check applicable boxes.)

(i)

the residence or place of employment of defendant.  
 where personal injury or property damage occurred.  
 where the defendant does or solicits business.

(j)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title (if applicable)

\_\_\_\_\_  
Plaintiff (Signature)

\_\_\_\_\_  
Mailing Address    City    State    ZIP

\_\_\_\_\_  
Home Phone                      Work Phone

(k)

Instructions: If you are filing documents supporting your claim (for example: promissory notes, checks, receipts, bills), you must also attach a copy of each document for each defendant.

3) **BUSINESS NOT A CORPORATION**

If a business is not a corporation, list the name of the owner(s), d/b/a (doing business as) and the name of the business.

Example: JOHN J. MILLER d/b/a John's Record Shop

If you do not know the name of the owner(s) or the exact name of the business, you may be able to get this information by calling or writing to:

**Department of Commerce, Community  
& Economic Development  
Occupational Licensing Division.  
P. O. Box 110806  
Juneau, Alaska 99811-0806**

**Juneau phone: 465-2550  
Anchorage phone: 269-8160**

The following is available to the public: name of owner, name of business, business license number, type of business licensed to do and mailing address. This information from the Department of Commerce, Community & Economic Development may also be available at your local library.

4) **UNINCORPORATED ASSOCIATION**

If the plaintiff or defendant is an unincorporated association, list the name of the association and identify it as an unincorporated association.

Example: BLUE RIDGE CONDOMINIUM ASSOCIATION,  
an unincorporated association

5) **PARTNERSHIP**

If any party is a partnership, list the name of the partnership (or if there is no name, list the names of the partners) and its identity as a partnership.

Examples: a) CENTURY APARTMENT PROPERTIES, a partnership  
b) MICHAEL G. MILLER, MARY T. MILLER and  
GEORGE R. SMITH, partners in an unnamed partnership

6) **CORPORATION**

If a business is a corporation, you must list the name of the business and identify it as a corporation.

Example: WORLD FISH CANNERY, INC., a corporation

To find out if a business is a corporation and the name and address of the registered agent and officers, contact:

**Department of Commerce, Community & Economic Development  
P. O. Box 110808  
Juneau, Alaska 99811-0808**

Juneau phone: (907) 465-2530  
Anchorage phone: (907) 269-8173

For corporation information available on the web, you may go to:  
<http://myalaska.state.ak.us/business/>. Read the instructions for searching the Corporations Database.

- ⓓ Leave blank. The court clerk will write the case number here.
- ⓔ Check the correct box.

- Ⓕ Write the amount the defendant owes you. Be sure to write the full amount owed even if it is over \$10,000. As explained later on the form, you will have to give up your claim to any amount over \$10,000, but it is important to state the full amount on this line so the judge will understand your claim.

If you are seeking statutory penalties (for example, bad check penalties under AS 09.68.115 or penalties for failure to refund a tenant's security deposit under AS 34.03.070(d), etc.) you must state that in your complaint.

If you are asking for the return of personal property, you must state on this line the approximate value of the property. The court needs to know this in order to be sure it has jurisdiction (authority) to hear the case in small claims court. If you want the property rather than money, be sure to state this clearly. Be aware, however, that if the property is gone and cannot be recovered, the only thing the court will be able to give you is a judgment for money damages.

If you are afraid the defendant may dispose of the item you seek and it is very important to you that you get that exact item, you may want to consider contacting a lawyer. Discuss with the lawyer the advisability of filing a formal civil suit instead of a small claim so you can (1) attempt to have the item seized prior to trial (prejudgment attachment) or (2) ask the judge for a prejudgment restraining order requiring the defendant not to dispose of the item. These remedies are not available prior to judgment in a small claims case.

- Ⓖ On these lines briefly describe why the defendant owes you money (or personal property).
- Ⓖ Read the first two sentences in this paragraph and be sure you agree with them.
- Ⓖ Read the sentence and then check one or more of the boxes. In this section you are affirming that you have complied with the rule described on page 5 about where small claims cases can be filed.
- Ⓖ Fill in all the blanks in this section. Print everything except your signature. The chart on the following page shows who must sign the **Complaint**.
- Ⓖ Attach to the complaint any documents which support your claim (for example: cancelled checks, bills, promissory notes, etc.). You must attach:

- 1) the original (or a copy) for the court *and*
- 2) a copy for *each* defendant.

If you do not want to attach your originals, you can attach copies. However, be aware that in some cases you will have to give the court the original document before the court can give you a judgment (for example: promissory notes, NSF checks, etc.) Failure to attach adequate supporting documentation may delay the processing of your case.

## Who Must Sign the Complaint

<i>If Plaintiff is:</i>	<i>The Complaint Must be Signed by the Lawyer Representing the Plaintiff or, if None, by:</i>
An individual person	That person
Two or more persons	Each person
A minor	A parent or guardian
A person doing business under an assumed business name	That person
An unincorporated association	<p>A person authorized in writing by the charter, bylaws or governing body of the association</p> <p>The written authorization must be filed with the <b>Complaint</b>, and the person signing must also list his or her title or position in the association.</p>
A partnership	One of the partners
A corporation or a limited liability company	<p>One of the officers or, for a limited liability company, a managing member</p> <p style="text-align: center;">or</p> <p>an employee authorized in writing (The written authorization must be filed with the <b>Complaint</b> and must be signed by a corporate officer, a managing member of a limited liability company, or be a resolution of the board of directors of the corporation.)</p> <p>The person signing must also list his or her title or position in the corporation or the limited liability company.</p>

### 2. Summons (form SC-2)

You must fill out a separate **Summons** for each defendant. Fill out only the top of the form (shown on the opposite page).

On lines (a), (b), and (c) of each **Summons** write the same things you wrote on these lines on the **Complaint**. Leave the case number line blank.

Section (d) is for the defendant's name and address. If you are going to have the **Summons** served on the defendant by certified mail, use the defendant's personal mailing address. If you want the **Summons** served by a process server, you must provide service instructions for the process server. See page 13 about serving the **Summons**.

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT _____ (a)	
_____ (b)	
Plaintiff(s)	
vs.	
_____ (c)	CASE NO. _____ SC
Defendant(s)	<b>SUMMONS</b>
TO: ADDRESS: _____ _____	} (d)

Additional information about how to address the **Summons**:

If the defendant is a:

a. **PERSON**

Be sure to use the defendant's personal address and not the defendant's work address. This is especially important if you want the **Summons** served by certified mail.

b. **MINOR**

The minor and the minor's parent or legal guardian must each be served with a separate **Summons**:

Example: (assuming Tom Smith is a minor):

1st **Summons** TO: Tom Smith, a minor  
(address)

2nd **Summons** TO: John R. Smith  
Parent of Tom Smith, a minor  
(address)

c. **BUSINESS NOT A CORPORATION**

The **Summons** must be addressed to the owner of the business.

Example: TO: John J. Miller, Owner  
John's Record Shop  
(address)

d. UNINCORPORATED ASSOCIATION

The **Summons** must be addressed to one of the following:

- 1) an officer, or
- 2) a managing or general agent, or
- 3) any other person authorized by appointment or by law to receive service of process.

Examples: TO: Bob Black, President  
Blue Ridge Condominium Association  
or  
TO: Betty White, Manager  
Tundra Sportsmen's Association

e. PARTNERSHIP

The **Summons** must be addressed to one of the following:

- 1) one of the general partners, or
- 2) a managing or general agent of the partnership, or
- 3) any other agent authorized by appointment or by law to receive service of process, or
- 4) a person having control of the business of the partnership.

Examples: TO: Mike Miller, General Partner  
Century Apartment Properties  
(address)  
or  
TO: Joe Carter, Manager  
Century Apartment Properties  
(address)

f. LIMITED LIABILITY COMPANY

The **Summons** must be addressed to one of the following:

- 1) The registered agent, or
- 2) a managing member, or
- 3) a managing or general agent of the limited liability company, or
- 4) any other agent authorized by appointment or by law to receive service of process.  
(See, for example, Alaska Statute 10.50.065(b) about limited liability companies.)

Examples: TO: Robert Adams  
Registered Agent for Blackstone Investments, LLC  
(address)  
or  
TO: Greg Jones, Managing Member  
Blackstone Investments, LLC  
(address)

See page 8 paragraph (c)(6) for information about how to find the names of the registered agent and officers.

g. CORPORATION

The **Summons** must be addressed to one of the following:

- 1) The registered agent, or
- 2) an officer, or
- 3) a managing or general agent of the corporation, or
- 4) any other agent authorized by appointment or by law to receive service of process.

**(See, for example, Alaska Statute 10.06.175(b) about corporations and AS 21.09.180-.190 about insurance companies.)**

Examples:      TO:    Tom Jones  
                                 Registered Agent for World Fish Cannery, Inc.  
                                 (address)  
                                 or  
                                 TO:    Sally Smith, President  
                                 World Fish Cannery, Inc.  
                                 (address)  
                                 or  
                                 TO:    Bill Brown, Manager  
                                 World Fish Cannery, Inc.  
                                 (address)

See page 8 paragraph (c)(6) for information about how to find the names of the registered agent and officers.



3. **ANSWER (form SC-3)**

Fill out only the top of the **Answer** form as shown below. Fill in lines (a), (b) and (c) the same way you filled in these lines on your **Complaint**. Leave the case number line blank.

Fill out a separate **Answer** form for each defendant.

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT _____ (a) _____	
_____ (b) _____	CASE NO. _____ SC
_____ Plaintiff(s). _____	
vs. _____	
_____ (c) _____	
_____ Defendant(s) _____	
ANSWER, COUNTERCLAIM, REQUEST FOR CHANGE OF PLACE OF TRIAL	

**D. How to Give Notice to a Small Claims Defendant.**

The following must be served on (delivered to) each defendant to notify the defendant about the case:

1. the **Summons** addressed to the defendant
2. a copy of the **Complaint** plus a copy of any supporting documents filed with the **Complaint**
3. an **Answer** form
4. the *Small Claims Handbook* furnished by the court

In cases being heard by a magistrate, defendants can only be served if they are within the State of Alaska. The only exceptions to this rule are: (1) out-of-state landlords may be served outside Alaska under the Landlord-Tenant Act (AS 34.03.340), and (2) an out-of-state person who owns or operates a motor vehicle involved in an accident in Alaska may be served as described in AS 09.05.020.

In cases being heard by a district court judge, defendants may be served out-of-state. If you need to serve defendants who are outside the United States, please see Section 5 c. of How to Serve a Summons (CIV-106) for further information.

There are two methods of service:

1. Certified Mail.

The court fee for service by certified mail is \$4.00 for each defendant served. You must also provide a 9"x 12" envelope, filled-out postal service forms for certified mail, and enough postage on the envelope to cover the postal fees for certified mail, restricted delivery and a return receipt. Ask the court for the SC-90 Instructions about how to fill out the postal forms and envelope. When you fill out the mailing forms and the envelope, be sure to use the same name, title and address for the defendant as you wrote on the **Summons**.

## 2. Personal Service by Process Server.

- a. Choose a process server from the court clerk's list. You can also find a list of licensed process servers on the Alaska State Trooper website: [www.dps.state.ak.us/Statewide/PermitsLicensing](http://www.dps.state.ak.us/Statewide/PermitsLicensing) Click on "Civilian Process Server List." If there are no private process servers in your area, peace officers (usually State Troopers) will serve process.

If the defendant is out-of-state, personal service by a process server must be made by a peace officer or a licensed process server in that state. To locate a peace officer in another state, contact your local troopers or call the troopers' Judicial Services offices in Anchorage at (907) 264-0699.

- b. Fill out **Service Instructions** (using either the court form CIV-615 or the process server's or trooper's form). List the documents to be served and describe where the defendant can be found.
- c. Pay the process server's fees to the process server or trooper. Fees are set by the individual process server. However, the maximum amount you may recover as costs from the debtor is governed by Administrative Rule 11. The current amount recoverable is \$45.00 for each person on whom service is made *plus* a minimum of \$20.00 for the first 25 miles or portion thereof traveled. Additional amounts may be recovered for extra mileage or extra time spent serving the documents.

NOTE: If the defendant is a minor, the documents *must* be served on the minor by a process server or police officer. The copies for the parent or guardian may, however, be served by certified mail.

### E. Notification that the Documents were Served or not Served.

If you use certified mail, the court will notify you whether or not each defendant was served. If you use a process server, the process server will give you a "*Return of Service*" form telling you whether the defendant was served.

If a defendant was *not* served, you must return to the court to arrange to have the defendant served by another means.

### F. Defendant's Response.

If the defendant is served with the papers, you must wait to see if he files an **Answer**.

#### 1. No **Answer**.

If the defendant does not file an **Answer** within 20 days (40 days if the defendant was served outside the United States) after he is served, you may ask the court to enter a default judgment in your favor. Fill out form SC-8, **Default Affidavit and Request for Judgment** (available at your local court). Note that if the defendant has a valid excuse for filing late, the court may allow the defendant to file an **Answer** even after the 20 days (40 days if the defendant was served outside the United States) have passed if the court has not yet entered the default judgment.

In addition to filing form SC-8, you may also have to give the court additional information. For example, if the documents attached to your complaint do not fully prove the dollar amount of your claim, the court may have to hold a hearing to establish the amount of money you are owed.

Also, if your case is to collect a promissory note, NSF check or other negotiable instrument, you must give the court the original note or check or other document if you have not already done so. The rules require the court to cancel such instruments before judgment may be entered.

If the defendant is a person under age 18, a person in the active military service or a mentally incompetent person, the **SC-8 Default Affidavit** may not be used to obtain a default judgment because there are special laws protecting these persons. These laws may require the appointment of a lawyer or guardian for the defendant at your expense or may prevent you from getting a default judgment. You will probably find it necessary to consult a lawyer.

2. **Answer** on form SC-3.

By filing his **Answer** on form SC-3, the defendant has agreed to the use of District Court Civil Rules in his case.

- a. If the defendant's **Answer** states that he agrees he owes you money, the court will enter a judgment in your favor. As stated in section 1 above, if you are suing to collect a negotiable instrument, you must give the original to the court before the court will give you your judgment.
- b. If the defendant's **Answer** denies that he owes you the money or states a counterclaim, the court will set the matter for trial and notify you and the defendant in writing of the place, date and time of the trial.
- c. Counterclaim. If the defendant's SC-3 **Answer** form states a counterclaim against you, the counterclaim will be heard along with your original claim at the trial. If the defendant's counterclaim is for more than \$10,000, the defendant must waive (give up) his claim to the amount over \$10,000 if he wants to keep the case in small claims court. (See Section 3 of the **Answer** form, SC-3.)

As long as the case remains in small claims court, you do not have to file a reply to the counterclaim. The court will consider it denied and set it for trial. District Court Civil Rule 13(a). Note that if the defendant files a formal answer instead of a small claims **Answer** and the formal answer includes a counterclaim, you must file a reply to the counterclaim. See section 3 below.

When you see that the defendant has included a counterclaim in his small claims **Answer**, you may decide you would rather have the whole case (both claims) heard under the formal rules instead of the District Court Civil Rules. You have 10 days from the date the defendant's **Answer** is mailed to you to make this request. The court will not assist you in preparing this request or any other document for formal procedures. No forms are available. You may want to talk to a lawyer for assistance. If you make this request for formal procedures, all prior waivers of counsel, jury trial, and amounts in excess of small claims jurisdiction will no longer be in effect. The case becomes a whole new case under different rules. District Court Civil Rule 10(c).

- d. Change of place of trial. If the defendant's **Answer** requests a change of place of trial, the court will send you a notice and give you a chance to respond to the request. You can oppose the move by sending **Plaintiff's Response to Request for Change of Place of Trial** (form SC-5) to the court within 20 days from the date the court mails the defendant's **Answer** to you. The court will consider both parties' statements and decide where the trial will be held. You will be notified of the court's decision.

### 3. Formal **Answer** and Request for Formal Rules

If the defendant (1) decides to ask for the formal Rules of Civil Procedure instead of the District Court Civil Rules or (2) has a counterclaim in excess of \$10,000 and does not want to waive the excess, the defendant cannot use the SC-3 **Answer** form provided by the court. Instead, the defendant must within 20 days (40 days if defendant was served outside the United States):

- a. file with the court (1) a written request for the formal rules and (2) a formal answer to the complaint; and
- b. serve a copy of these documents on you; and
- c. file with the court proof that the documents were served on you.

If the defendant requests formal rules, the court will grant the request and send you a copy of the **Order For Formal Procedure**. At this point, District Court Civil Rules no longer apply. The court does not provide forms or other assistance in cases proceeding under the formal rules. You should talk to a lawyer for assistance.

Note, however, that if the defendant's formal answer includes a counterclaim against you, you must file a reply to that counterclaim (and serve a copy of your reply on the defendant) within 20 days after you are served with the defendant's answer. Civil Rule 12. If you fail to do so, a default judgment may be entered against you on the counterclaim. This is different from the District Court Civil Rules (which do not require you to reply to a counterclaim). See section 2.c. above.

### G. Change of Address and Telephone Number.

If you change your mailing address and telephone number while the case is pending you must notify both the court and the defendant. The court will consider that you have received all documents mailed to you at the address you furnished. District Court Civil Rule 11(d). You may file a **Notice of Change of Address** (form TF-955), to notify the court of the changes.

### H. Settlement Prior to Trial.

If at any time prior to trial the claim is settled between you and the defendant, you must file a **Dismissal** (form SC-9).

1. If the claim is settled *before* the defendant files his **Answer**, you must sign the portion entitled Dismissal by Plaintiff.
2. If the claim is settled *after* the defendant files his **Answer**, both you and the defendant must sign the portion entitled Stipulation for Dismissal.

## Chapter III

### WHAT TO DO IF SOMEONE SUES YOU IN SMALL CLAIMS COURT

If someone sues you in small claims court, you are called the *defendant*. The person suing you is called the *plaintiff*. You must be given a copy of the **Complaint**, a **Summons**, an **Answer** form and this booklet.

A small claim is not a criminal action. The plaintiff is not seeking to have you put in jail. The plaintiff merely wants payment of money or return of personal property from you.

#### A. What to do If You Are Served With a Summons and Complaint.

**Never simply ignore the Complaint.** If you do, a default judgment may be entered against you upon request of the plaintiff. Then, if you do not pay this judgment, the plaintiff may get other court orders allowing seizure of your money or property. If this happens, there will be extra costs which *you* will have to pay.

You have 20 days (40 days if you were served outside the United States) after you receive the **Summons** to file your **Answer** with the court. Anytime after that 20 days (40 days if you were served outside the United States), the plaintiff can ask the court for a default judgment against you.

Each defendant must file an **Answer**. Do not rely on someone else's **Answer**. If you are named as a defendant in the **Complaint**, you must file an **Answer**. See the chart on page 19 for who must sign the **Answer**.

Read the **Complaint** carefully. Try to remember everything you can about the incident or transaction which caused the plaintiff to sue you. Although you must file your **Answer** within 20 days (40 days if you were served outside the United States), you may want to wait a few days before answering so that any surprise, anger or dismay you may be feeling has gone away. Take time to make sure your **Answer** is a clear and direct response to the plaintiff's claim. Be sure to include any counterclaims you have against the plaintiff. If you want to talk to a lawyer, do so right away so there is ample time to file your **Answer** with the court.

## Who Must Sign the Answer

<i>If Defendant is:</i>	<i>The Answer Must be Signed by the Lawyer Representing the Defendant or, if None, by:</i>
An individual person	That person
Two or more persons	Each person
A minor	A parent or guardian
A person doing business under an assumed business name	That person
An unincorporated association	A person authorized in writing by the charter, bylaws or governing body of the association  The written authorization must be filed with the <b>Answer</b> , and the person signing must also list his title or position in the association.
A limited liability company	One of the managing members or an employee authorized in writing (The written authorization must be filed with the <b>Answer</b> .)  The person signing must also list his title and position in the limited liability company.
A partnership	One of the general partners
A corporation	One of the officers  or an employee authorized in writing (The written authorization must be filed with the <b>Answer</b> .)  The person signing must also list his title and position in the corporation.

### B. If You Agree With What The Plaintiff Says.

1. If you agree with what the plaintiff says, you may want to contact the plaintiff to settle the matter between yourselves. If you settle the matter with the plaintiff, the small claims case can be dismissed. A **Dismissal** form (SC-9) must be signed and filed with the court by the plaintiff.
2. If you agree with what the plaintiff says but have not settled the claim with the plaintiff, you should mark the box on the **Answer** form that says: "I agree with what the plaintiff claims." **DO NOT FILL IN ANY OTHER BOXES ON THIS FORM.** Date and sign the form. Keep one copy. Return the original and one copy to the court within 20 days from the date you received the **Summons**. The plaintiff will be awarded a judgment in the amount claimed plus costs and interest.

If you want to enclose payment of the plaintiff's claim, contact the court to find out the amount you should add for costs and interest. If you do not pay this added amount as well as the principal amount claimed, the court may enter a judgment against you for the amount you have not yet paid. Make your check payable to "Clerk of Court", and write your case number on your check.

### **C. If You Do Not Agree With What the Plaintiff Says.**

If you disagree with what the plaintiff says, you must file an **Answer** with the court. First, decide whether you want the District Court Civil Rules or the formal civil rules to apply to your case. See the discussion of this question in paragraph 1.d. below. If you want the District Court Civil Rules, fill out the enclosed SC-3 **Answer** form as explained in paragraph 1 below. If you want the formal civil rules, you must draft a formal answer as described in paragraph 2 below. You may not use the SC-3 **Answer** form. If you want to talk to a lawyer to help you decide what to do, you must do it quickly because you must file either your SC-3 **Answer** or your formal civil answer within 20 days (40 days if you were served outside the United States).

#### **1. SC-3 Answer.**

a. Type or print neatly. Use black ink.

b. Section 1: **Answer**

- 1) If you believe you owe the plaintiff nothing or only part of the amount claimed, mark the box that says: "I owe the plaintiff" and then mark the box that says "Nothing" or write the amount you feel you owe the plaintiff and the reason why. Remember to state why you do not owe the plaintiff the amount claimed. Inability to pay is *not* a legal defense to a claim.
- 2) If you believe the plaintiff owes you, mark the box that says "Counterclaim" and state the amount the plaintiff owes and the reason why.

c. Section 2: Request for Change of Place of Trial.

If you believe the trial should be held in another location, complete section 2. You may request a change of place of trial if you will be put to *unnecessary* expense or inconvenience if the trial is held where the case is filed. You may also request a change in the place of trial if the **Complaint** was filed in a court location which is neither:

- 1) the residence or place of employment of any defendant, *nor*
- 2) where a defendant's alleged wrongful conduct caused damage to plaintiff's property, *nor*
- 3) where any defendant does or solicits business.

If you request a change of place of trial, the court will notify the plaintiff of your request. The plaintiff will be given 20 days to respond. The court will consider both parties' statements and decide where the trial will be held. You will be notified of the court's decision.

d. Section 3: Small Claims Election.

The plaintiff has chosen small claims procedures. However, you do not have to accept small claims procedures. You may choose formal rules instead.

Please read the chart on page 3 for a comparison of these two procedures.

If you sign and return the **Answer** form (SC-3), you have chosen small claims procedures. See paragraph 2 below for what to do if you want formal rules instead.

- e. Fill in the lines at the bottom of the form and sign it. Be sure to include your title if you are answering for a business defendant.

If you have documents supporting your claim (for example: checks, receipts, bills), you must attached them to the **Answer**. Attach a copy for the court and copy for the plaintiff.

Return the original and one copy of the **Answer** to the court. Keep one copy for your records.

- f. Trial Date.

If you file an SC-3 **Answer** disagreeing with the plaintiff's claims, the court will set the matter for trial and notify you and the plaintiff in writing of the place, date and time of the trial.

## 2. **Formal Rules Election.**

If you want the formal rules of civil procedure to apply to your case instead of the District Court Civil Rules, you cannot use the SC-3 **Answer** form provided by the court. Instead you must:

- a. file with the court (1) a written request for formal rules and (2) a formal answer to the complaint in compliance with Civil Rules 7 through 16, 76 and 77; and
- b. serve a copy of these documents on the plaintiff; and
- c. file with the court proof that the documents were served on the plaintiff.

You must do all this within 20 days (40 days if you were served outside the United States) after you receive the **Summons** and **Complaint** or risk having a default judgment entered against you.

The court does not provide forms for your answer or your request for formal procedure. The court cannot help you prepare your answer or give you any other assistance once you have requested the formal rules. The court will automatically grant your request and send you an **Order for Formal Procedure**. If you need assistance, you must contact a lawyer.

## **D. Change of Address and Telephone Number.**

If you change your mailing address while the case is pending, you must notify both the court and the plaintiff. The court will consider that you have received all documents mailed to you at the address you furnished. District Court Civil Rule 11(d). You may use form TF-955, **Notice of Change of Address** to notify the court of the changes.



## Chapter IV

### PREPARING FOR TRIAL

Once the **Complaint** and **Answer** are filed, most small claims cases are ready for trial. The court will send you a **Notice of Trial** (SC-11). This notice tells you *when* and exactly *where* the case will be tried. *Make a careful note of the trial date and time.* You must appear on that date and be prepared to present your side of the dispute. If the plaintiff fails to appear at the trial, the court may dismiss the case. If the plaintiff is there and the defendant fails to appear, the court may grant a default judgment against the defendant. District Court Civil Rule 17.

#### A. Collect Evidence.

The most important thing to do while waiting for trial is to get your evidence together. Collect any papers, legal documents, photographs or other physical evidence supporting your claim and bring them to your trial. Examples of such evidence are: contracts, bills of sale, receipts, cancelled checks, a letter from the other party, a copy of a money order, a bill for repairs, an estimate of repair costs (in automobile accident cases you are likely to need more than one estimate), clothing, a small appliance which does not work (a toaster or radio or even a small outboard motor), pictures of larger items such as a damaged car or boat or an accident scene, etc.

#### B. Contact Witnesses.

Witnesses are another source of evidence. Examples are: a person who saw your accident, a person who overheard statements made to you by the other party, a person who saw damaged goods when they were first delivered, the person who sold you something or accepted your payment.

Sometimes you may want to have a witness such as a mechanic or appliance repairman tell the judge how much something is damaged or whether it is defective. Such a witness should have a chance to see the thing he is to talk about before he testifies.

Bring your witnesses with you to the trial. If all you have is a written statement from a witness, the judge may consider it. However, the written statement may not be very valuable evidence at the trial because the judge and the other party will not be able to question the absent witness about the written statement.

#### C. Subpoena Witnesses if Necessary.

If you believe a witness may not come when you ask, you should have a subpoena issued by the court. A subpoena is a court order requiring a person to appear and testify in court. If you do not subpoena a witness and the witness does not appear at trial, you will be required to present your side of the case without that witness. Postponements of trial at the last minute are not usually allowed.

A subpoena may be served by certified mail through the court or by a licensed process server, a police officer or a person age 18 or over who is not a party in the case. You must attach to the subpoena a witness fee of \$12.50 if it will take 3 hours or less of the witness' time to attend the trial (including travel time). Attach \$25 if it will take more than 3 hours. Witnesses who must travel more than 30 miles from their residence must also be paid round trip mileage at the rate allowed for state employees. Administrative Rule 7. Mileage rates can be found on the court system website ([www.courts.alaska.gov/home.htm](http://www.courts.alaska.gov/home.htm)). Click on "mileage rate" under the "Court System Information" heading for current and past mileage rates.

#### D. Prepare Outline.

You should make a list or outline of all your evidence, including witnesses. You should refer to your list or outline at trial to make sure you remember to tell the judge the important facts.

## Chapter V

### TRIAL

If you have difficulty hearing, tell the clerk and ask to use the assisted listening equipment available in the courtrooms.

#### A. Before Trial.

Be sure to get to court a little early on the day of your trial. This will give you time to become familiar with the courtroom. If possible, watch another small claims trial before yours. There are no strict rules of dress, but you should be neat and clean.

In small towns and villages the court may be only a single room and yours may be the only case scheduled. In cities there will be a courthouse with several courtrooms. There may be several cases scheduled for the same time as yours. If you cannot tell from your notice of trial which courtroom your trial will be in, ask the court clerk or receptionist for directions.

You may have to wait before your case is called. The judge may announce all the cases to be heard on that date, or there may be a printed "calendar" of cases posted outside the courtroom or at the clerk's office.

#### B. During Trial.

Each party to the lawsuit will have the opportunity to present evidence under the guidance and direction of the judge. The plaintiff must present his case first, and then the defendant may present his.

You must present your own case at the trial or have your lawyer present it for you. Court rules state that no one except you, your lawyer or a legal intern (or your parent or guardian if you are a minor) can represent you in court. Even though you may have given someone a power of attorney allowing that person to act for you in certain business transactions, such a power of attorney will not enable the person to represent you in court.

Before beginning to testify, all parties and witnesses will be required to take an oath to tell the truth.

Some suggestions for presenting your case are:

1. Start with a sentence or two stating what your case is about.
2. Then begin at the beginning and describe in more detail what happened and when it happened. Usually it is best to tell your story in chronological order. Stay on the subject. Try not to get sidetracked.
3. If you have documents or photographs or other items which may help prove your case, show them to the judge.
4. If you have witnesses, tell the judge you would like to call them to the witness stand. You will have to ask your witnesses questions which will allow them to tell what they know about the case.

The judge may ask you and your witnesses questions at any time. At the end of your testimony and also at the end of each of your witnesses' testimony, the judge will allow the opposing party to ask you and your witnesses questions.

When the other party presents his or her side of the case, you should sit quietly at your table. Take notes so you will remember what to ask when the judge tells you it is your turn to ask questions. Comments and questions are not proper until the judge gives you permission. Your questions should be simple and direct. The court will not allow arguments between the parties.

### **C. Suggestions About Settlement.**

At any time during the trial, the judge may suggest that you and the other party settle the case. The judge may suggest some terms of settlement. You are not required to settle the case, but often the judge's suggestions will be helpful.

### **D. At the End of the Trial.**

At the end of the trial, the judge will decide the case on the evidence presented. The judge may do this immediately or the judge may postpone the decision in order to study the case. This is called "taking the case under advisement."

The court will either give you a copy of its final judgment at the end of trial or mail it to you.

The court will keep any items of evidence presented to it for at least 30 days in case either party appeals. If you want your evidence back, you must ask the court for it.

## Chapter VI

### AFTER TRIAL

The judge will decide who wins the case. The judge may award either party all, part, or none of the party's claim. The court's decision is called a "judgment." The judge will fill out a **Judgment** form and either give it to the parties or mail it to them. The party who wins a money judgment is called the *judgment creditor*, and the losing party is called the *judgment debtor*.

#### A. Payment of Judgment.

If you are the debtor, you should pay the creditor directly. Be sure to obtain a receipt. If for any reason you cannot make payment directly to the creditor, you may pay the court. If you pay the court, make your check payable to "Clerk of Court" and *be sure to write your case number on your check*. The court will forward the money to the judgment creditor.

After you have paid the judgment and all your checks have cleared the banks, you should ask the judgment creditor to sign a **Satisfaction of Judgment** (form SC-17). These forms are available at the court. The law requires the judgment creditor to give you (the judgment debtor) a written acknowledgment that the judgment has been satisfied (unless the payment comes from executing upon your earnings or property). AS 09.30.300. Also, in small claims cases District Court Civil Rule 20(e) requires the creditor to file a **Satisfaction of Judgment** with the court.

#### B. Installment Payments of the Judgment.

If the parties agree that payments may be made in installments, *both* parties must complete and file with the court a **Stipulation To Pay Judgment In Installments** (form SC-18).

##### A Stipulation To Pay Judgment In Installments:

1. Allows the judgment creditor to receive payments on a regular basis without incurring costs of execution.
2. Allows the judgment debtor to pay what he can afford without incurring additional costs. As long as the debtor makes the payments as agreed, the court will not issue a **Writ of Execution** (definition below) against the debtor's wages, property, or bank accounts.

If the debtor fails to pay as agreed, the court will issue a **Writ of Execution** against the debtor's wages, property or bank accounts at the request of the creditor. To make this request, the creditor must file with the court an affidavit stating the debtor has not complied with the installment payments agreement.

#### C. Judgment Debtor Refuses to Pay Judgment

If the judgment debtor will not pay voluntarily, the judgment creditor may ask the court to issue a **Writ of Execution**.

A **Writ of Execution** is a court order directing a peace officer or process server to take property of the debtor to pay the judgment. Property can include money, bank accounts, wages, personal and real property, or any other asset belonging to the debtor which has value.

For information about this, ask the court clerk for a copy of the booklet *Execution Procedure for Judgment Creditors*.

For information about the rights of the debtor, ask the clerk for the *Judgment Debtor Booklet*.

## D. Relief From Judgment.

### 1. Request to Set Aside Default Judgment.

If you think a default judgment was improperly entered against you, you can ask the court to set aside the judgment. To do this, you must complete and file with the court within one year a **Request to Set Aside Default Judgment** (form SC-24). You must show two things:

- a. that there are facts which show you could win the case if a trial were held; and
- b. any failure to appear at trial or answer the **Complaint** was not your fault.

The court will then allow the other party an opportunity to respond in writing to your request. The court will review both statements and notify you in writing of its decision. The court will not set aside a default judgment unless you give a good reason.

Filing a **Request to Set Aside Default Judgment** does *not* automatically stop the judgment creditor from having a **Writ of Execution** issued to collect the judgment. If you wish to keep the creditor from having a **Writ of Execution** issued against you, you must (1) file a motion requesting a stay of execution, and (2) file a bond or make a cash deposit with the court in the amount of the judgment, plus interest. You should contact the court for further information if you wish to post a bond.

### 2. Appeals

If either party believes the court applied the law incorrectly or reached a decision which is not supported by the evidence presented, that party may appeal the judgment to the superior court. *An appeal does not automatically give you a new trial.*

The superior court will not accept any new evidence. The only information the superior court will consider on appeal is (1) the tape recording of the trial, (2) any items presented as evidence at the trial, (3) the documents in the court file, and (4) legal memoranda.

To appeal, you must file a **Notice of Appeal** (form AP-100) in the superior court within 30 days from the date the judgment is distributed. Filing a **Notice of Appeal** does not prevent the creditor from enforcing (collecting) the judgment. Appeals are complicated, and you should consider seeing a lawyer if you want to appeal.

For more information about how to appeal your case, ask the court clerk for booklet AP-200, **Instructions for Filing An Appeal From The District Court To The Superior Court.**

## Appendix A

### SMALL CLAIMS STATUTE

**Sec. 22.15.040. Small claims.** (a) Except as otherwise provided in this subsection, when a claim for relief does not exceed \$10,000 exclusive of costs, interest, and attorney fees, and request is so made, the district judge or magistrate shall hear the action as a small claim unless important or unusual points of law are involved or the state is a defendant. The Department of Labor and Workforce Development may bring an action as a small claim under this subsection for the payment of wages under AS 23.05.220 in an amount not to exceed \$20,000, exclusive of costs, interest, and attorney fees. The supreme court shall prescribe the procedural rules and standard forms to assure simplicity and the expeditious handling of small claims.

(b) All potential small claim litigants shall be informed if mediation, conciliation, and arbitration services are available as an alternative to litigation.

### DISTRICT COURT CIVIL RULES

#### Rule 8. Scope and Applicability.

(a) Procedure in small claims actions, as defined by AS 22.15.040, is governed by these rules and other rules specifically incorporated herein by reference, when all parties to the action elect to be governed by them. Part I of the District Court Rules of Civil Procedure governs small claim actions when the parties do not elect small claim procedure.

(b) A party having a claim or claims exceeding the maximum amount of a small claim as defined by AS 22.15.040 may waive the right to recover the excess amount and elect to proceed under this Part II, by filing a written waiver of the excess amount.

(c) Actions to foreclose or enforce statutory, common law or possessory liens and actions for recovery of real property may not be brought as small claims actions. The court may, on its own motion, order the rules in Part I to apply in any other action when important or difficult questions of fact or law are involved.

#### Rule 9. Informality.

Formality in pleadings, motions, and the introduction of evidence is not required. A writing filed as a complaint, answer or application shall be legible and brief.

#### Rule 10. Pleadings.

(a) A small claim action is commenced by filing a complaint on the form provided by the Alaska Court System. The complaint is a short, plain written statement showing the nature of the claim for relief, signed by the plaintiff. The complaint shall contain a statement that the plaintiff elects to have the claim treated as a small claim and waives the right to jury trial and the right to proceed formally. A complaint which does not contain a waiver of the right to jury trial and formal proceedings is governed by Part I of the District Court Rules of Civil Procedure. The plaintiff's mailing address shall be shown on the complaint. When the complaint is based upon a written document, the document or a copy of it shall be attached to the complaint.

(b) a party defending against a claim shall file an answer on the form provided by the Alaska Court System. The answer is a short, plain statement showing the nature of the defense and any claim that the defendant has against the plaintiff arising from the same transaction or occurrence and shall conform with Rule 12 of these rules. The answer must be filed with or mailed to the court where the action was commenced and be signed by the defendant. When the answer or counterclaim is based upon a written document, the document or a copy of it shall be attached to the answer. The defendant's mailing address shall be shown on the answer. The clerk or magistrate shall mail a copy of the answer to the plaintiff, and shall maintain a record of the mailing.

(c) An answer form shall be served with the complaint and shall advise the defendant of the right to proceed informally under this Part II or formally under Part I of these rules. The form shall contain a statement that when the defendant requests informal proceedings, the defendant waives the right to trial by jury and to proceed formally. A plaintiff against whom a counterclaim is filed shall have ten days after such claim is mailed to the plaintiff to withdraw the plaintiff's election to proceed under Part II, and failure to withdraw the election waives the plaintiff's right to trial by jury and formal procedure as to the counterclaim.

(d) A defendant who does not wish to contest the claim may default by failing to file an answer or may file an answer agreeing with the complaint. The latter shall be sufficient basis for entry of judgment on the pleadings by the court or clerk when the claim is for a specific amount of damages.

### **Rule 11. Process.**

(a) The summons shall be issued and the summons and complaint served, according to the procedures of Civil Rule 4, except that:

- (1) If personal service is used, the clerk shall deliver the summons for service to a peace officer or to a person specially appointed to serve it.
- (2) If service is by registered or certified mail, the clerk shall mail the summons and a copy of the complaint as provided in Civil Rule 4(h).
- (3) Service by publication or posting shall not be allowed.
- (4) Service on a defendant who is outside the state shall be allowed
  - (A) in accordance with the Landlord-Tenant Act, AS 34.03.340;
  - (B) in accordance with AS 09.05.020, entitled Service of Process on Nonresident Owner or Operator of Motor Vehicle; or
  - (C) as otherwise permitted under Civil Rule 4.
- (5) The affidavit required by Civil Rule 4(f) is not required in small claims cases and Civil Rule 4(j) shall not apply.

(b) A copy of the Alaska Small Claims Handbook and a blank answer form shall be served with the summons and complaint.

(c) If the summons and complaint are served by registered or certified mail, a delivery receipt returnable to the district court shall be required. All returned delivery receipts shall be attached to the copy of the summons retained by the court.

(d) All parties shall inform the court and other parties of any change in mailing address during the pendency of the action. The parties are deemed to have received all documents mailed to them at the addresses furnished by them.

(e) Service of any pleading or process, including the summons and complaint, shall be valid even though refused by the recipient and returned after such refusal. Upon receiving a returned refused mailing, the clerk shall mail to the refusing party by first class mail a copy of the mailing refused and a notice that service of the original was valid upon refusal and that the case will proceed as if the recipient had accepted the original mailing.

(f) Civil Rule 45(a), (b), (c), (e), and (f), concerning subpoenas is incorporated in these rules for the purpose of securing the attendance of witnesses at trial, except that the fee tendered with a

subpoena need only cover the fees for mileage and for one-half day's attendance if the person's attendance, including travel time, requires no more than three consecutive hours.

### **Rule 12. Venue.**

- (a) The action shall be filed and the complaint shall contain a statement that it is filed:
- (1) At the nearest place to the residence or place of employment of an individual defendant; or
  - (2) At the place where the defendant's alleged wrongful conduct caused personal injury or damage to the plaintiff's property; or
  - (3) At a place where the defendant does or solicits business; and
  - (4) At a place which will not cause unnecessary expense or inconvenience to the defendant.
- (b) The answer shall contain any application of the defendant for change of place of trial. The change shall be granted if the action is not filed in accordance with Rule 12(a). An effective waiver of Rule 12(a) can be made only after the commencement of the action.
- (c) The plaintiff shall have twenty days from the date of mailing receipt of the answer by the clerk or magistrate to file a statement opposing an application for change of place of trial. The court shall consider the application upon the statements of the parties, and shall issue an order granting or denying the application. A copy of the order shall be sent to the parties by first class mail at the addresses shown on their pleadings. When the application is granted, the file shall be transferred. When the application is denied, the court shall set the action for trial.

### **Rule 13. Defenses and Objections --- When and How Presented.**

- (a) A defendant shall file or state an answer within 20 days after service of the summons and complaint upon the defendant. A counterclaim shall be deemed denied by the plaintiff.
- (b) When an answer is plainly insufficient to state a defense, the court may on its own motion enter judgment on the pleadings without trial. A judgment on the pleadings shall state the reasons for its entry.

### **Rule 14. Joinder of Parties and Claims.**

- (a) Minors and other persons under legal disability may appear only through guardians, guardians ad litem, or conservators.
- (b) Any persons having a claim or against whom a claim is made arising from the same transaction or occurrence which gave rise to the complaint may be joined as a party to the action.
- (c) Persons having a joint interest in the subject matter of the action and other persons whose participation is necessary for the court to give complete relief to those already parties shall be joined in the action if the court can obtain jurisdiction over them.
- (d) Parties may be added or dropped by order of the court on application of any party or on its own motion at any stage of the action and on such terms as are just. A person not already a party to the action added by the court shall be served copies of all pleadings and a summons in the manner provided by these rules unless such service is waived.
- (e) A party may join any number of claims arising from any number of transactions and occurrences against an opposing party, so long as the total amount of the claims does not exceed the small claim jurisdictional limitation.
- (f) The court may order any claim against any party to be severed and proceed to try it separately.



### **Rule 15. Attorneys -- Interns.**

(a) A corporation or other public or private organization may be represented in any stage of a small claims proceeding including an appeal by any officer or employee authorized in writing to represent it, AS 22.20.040 notwithstanding.

(b) Any party to a small claims action may be represented at any stage of the proceedings by an attorney at law or legal intern.

(c) Any party, except an attorney at law, asserting a claim as an assignee thereof, whether for collection, fee, or value, shall be represented at all stages of an action upon the claim by an attorney at law, or a legal intern. On application of a party or on its own motion, the court shall dismiss without prejudice any action filed or proceeded with in violation of this rule.

(d) Representation of a party by a legal intern at any stage of an action shall be governed by Part IV of the Alaska Bar Rules.

### **Rule 16. Trial.**

(a) Every small claims action shall be tried by the court without a jury. A judge may not be peremptorily challenged either under Civil Rule 42(c) or AS 22.20.022.

(b) The court shall admit any evidence which is relevant and material, despite the fact that such evidence might be inadmissible under formal rules of evidence.

(c) The court may investigate the controversy between the parties either in or out of court. The investigation must be made in the presence of the parties and the findings of fact resulting from the investigation must be stated on the record or reduced to writing and placed in the case file by the court.

(d) Testimony shall be given under oath and may be given in narrative fashion, and the examination of witnesses shall be informal. An adverse party has the right to cross-examine a party or witness. The court may take an active role in the examination of witnesses.

(e) The court may, at any time, consult with the parties on the record for the purpose of reaching a compromise or conciliation.

(f) The date set for trial shall be not less than 15 days from the date the court mails notice of the trial date to the parties.

### **Rule 17. Judgment.**

(a) If the defendant fails to answer the complaint within 20 days after service of process or fails to attend the trial, the defendant is in default. Default judgment shall be entered only after the plaintiff files an affidavit made upon good faith belief, after diligent inquiry, stating that the defendant is not an infant or otherwise incompetent, and that the defendant is not in the active military service of the United States or, if the plaintiff is unable to determine whether the defendant is in military service, stating that the plaintiff is unable to determine that fact. The court shall also require proof under oath, made upon personal knowledge or based on business records, of the truth of every essential element of the claim for relief. The clerk may enter a default judgment if the damages alleged are liquidated and no default hearing is required. If the defendant answers but fails to appear at trial, the court may nevertheless consider any relevant and material evidence filed with the answer. The court may allow an answer to be filed after the defendant is in default, but before judgment is entered, upon a showing of good cause. The plaintiff may move the court to

enter a default judgment if the defendant is in default. Affidavits or exhibits necessary to the entry of default judgment under this rule shall accompany the motion.

(b) Judgment on the pleadings may be entered pursuant to Rules 13(b) and 10(d).

(c) If the plaintiff fails to attend the trial, the plaintiff is in default. When neither party appears, the court may dismiss the action with prejudice. When the defendant appears and the plaintiff does not, the court shall inquire of the defendant concerning the validity of the defendant's defense and the defendant's knowledge, if any, of the reasons for the plaintiff's absence. The court may then, in its discretion, enter judgment dismissing the claim with prejudice. If the defendant has asserted a counterclaim, it shall be disposed of according to paragraph (a) of this rule.

(d) When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all of the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(e) A default judgment shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a default judgment is entered, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the pleadings.

(f) Dismissal for Want of Prosecution. Actions which have been pending in a court for more than six months without any proceedings having been taken may be dismissed as a matter of course for want of prosecution by the court on its own motion or on motion of a party to the action. The clerk shall review all pending cases semi-annually, and in all cases in which no proceedings have been taken for more than six months, shall send notice to the parties to show cause in writing why the action should not be dismissed. If good cause to the contrary is not shown within 30 days of distribution of the notice, the court shall dismiss the action. The clerk may dismiss actions under this paragraph if a party has not opposed dismissal. A dismissal for want of prosecution is without prejudice unless the court states in the order that the case is dismissed with prejudice.

(g) A claim may be dismissed with or without prejudice and without court order at any time by agreement of the parties, or upon written notice by the plaintiff at any time before the defendant has filed an answer. A dismissal with prejudice bars action in any court based on the claim dismissed.

(h) Judgment by confession may be entered pursuant to Civil Rule 57. Judgment pursuant to a compromise may be entered by written agreement of the parties or by oral declarations on the record at trial.

(i) After trial, the court shall enter judgment. The judgment need not be supported by findings of fact or conclusions of law. The judgment shall specify the exact relief given.

(j) If the judgment is entered upon a written instrument, the instrument shall be filed with the court and canceled by marks or writing across its face, unless the court orders otherwise.

(k) The court or the clerk may order a money judgment payable in installments and stay levy of execution upon stipulation of the parties. In the event the judgment is ordered payable in installments, it shall bear interest as provided by law. If the terms of a judgment made payable in installments are violated, execution may issue for the balance of the judgment remaining unpaid.

(l) The clerk shall distribute a copy of every order or judgment entered to all parties to the action. Every order and judgment shall include a clerk's certificate of distribution as defined in Civil Rule 58.1(d).

### **Rule 18. Appeal.**

Either party may appeal a judgment or an order refusing to relieve any party from a default. The procedure on appeal shall be governed by the rules for appeal of judgments of the district court to the superior court, except that the superior court shall grant trial de novo if the proceedings in the district court were not of record.

### **Rule 19. Relief From Judgment.**

Civil Rule 60 applies to motions for relief from judgment in small claim actions.

### **Rule 20. Remedies.**

(a) A small claims judgment may be enforced in the same manner as other judgments. No execution shall issue for two days after the date shown in the clerk's certificate of distribution on the judgment.

(b) No attachment or garnishment shall issue before judgment in a small claim action.

(c) Costs shall be allowed as of course to a prevailing party. A party entitled to costs may be allowed the filing fee and other charges made by the court, the expense of service of process, witness fees, and reasonable attorney's fees.

(d) A party may deposit with the court all or any part of any sum of money or any other thing capable of manual delivery which is sought in the action or due under a judgment. The party making the deposit shall inform all other parties to the action of the deposit. The court shall be governed by Rule 5, Alaska Rules Governing the Administration of All Courts, and shall release the deposit to the party entitled to it when the party becomes entitled to it. No interest shall accrue against a party making a deposit, to the extent of the deposit, after it is made.

(e) When the judgment has been satisfied, the judgment creditor shall file an acknowledgment of satisfaction with the court. The court may issue a satisfaction of judgment if the judgment debtor, by motion served on the judgment creditor, establishes that the judgment has been satisfied. The clerk may issue the satisfaction if the motion is unopposed.

### **Rule 21. Assistance to Litigants -- Handbook.**

Magistrates and clerks of any district court are authorized, where necessary, to assist litigants in the preparation of complaints and answers. First recourse shall be had to the Alaska Small Claim Handbook, which shall be available for distribution to prospective litigants at all locations of any court empowered to handle small claims actions, and shall be served upon the defendant with the summons and complaint. When a party is illiterate or otherwise unable to write his pleading and is unable to obtain assistance from a friend or relative, the clerk or magistrate shall write it on the appropriate form. A form written by the clerk or magistrate shall be signed by the party or bear the party's witnessed mark. The clerk shall note upon its face the method of preparing the pleading under this rule.

### **Rule 22. Legal Effect of Rules.**

(a) The forms published by the Alaska Court System to accompany these rules are legally sufficient and are intended to indicate the simplicity and brevity which the rules contemplate.

(b) The Alaska Small Claims Handbook published by the Alaska Court System to accompany these rules is not a rule of court.

(c) The forms for the complaint, the summons and the answer published by the Alaska Court System shall be used by the parties. All other forms are illustrative and not mandatory.

# ALASKA COURT SYSTEM MAILING ADDRESSES

825 WEST 4TH AVENUE  
ANCHORAGE AK 99501-2004

BOX 250  
ANGOON AK 99820-0250

BOX 147  
ANIAK AK 99557-0147

BOX 270  
BARROW AK 99723-0270

BOX 130  
BETHEL AK 99559-0130

BOX 238  
CHEVAK AK 99563-0238

BOX 898  
CORDOVA AK 99574-0898

BOX 646  
CRAIG AK 99921-0646

BOX 401  
DELTA JCT AK 99737-0401

BOX 909  
DILLINGHAM AK 99576-0909

BOX 176  
EMMONAK AK 99581-0176

101 LACEY STREET  
FAIRBANKS AK 99701-4761

BOX 211  
FORT YUKON AK 99740-0211

BOX 167  
GALENA AK 99741-1067

BOX 86  
GLENNALLEN AK 99588-0086

BOX 169  
HAINES AK 99827-0169

BOX 298  
HEALY AK 99743-0298

3670 LAKE STREET  
BUILDING A  
HOMER AK 99603-7686

BOX 430  
HOONAH AK 99829-0430

PO BOX 114100  
JUNEAU AK 99811-4100

BOX 100  
KAKE AK 99830-0100

125 TRADING BAY DR  
SUITE 100  
KENAI AK 99611-7717

415 MAIN STREET RM 400  
KETCHIKAN AK 99901-6399

204 MISSION ROAD RM 124  
KODIAK AK 99615-7312

BOX 317  
KOTZEBUE AK 99752-0317

BOX 229  
NAKNEK AK 99633-0229

BOX 449  
NENANA AK 99760-0449

BOX 1100  
NOME AK 99762-1100

435 SOUTH DENALI  
PALMER AK 99645-6487

BOX 1009  
PETERSBURG AK 99833-1009

BOX 1929  
SEWARD AK 99664-1929

304 LAKE STREET RM 203  
SITKA AK 99835-7759

BOX 495  
SKAGWAY AK 99840-0495

BOX 269  
ST. MARY'S AK 99658-0269

BOX 187  
TOK AK 99780-0187

BOX 250  
UNALAKLEET AK 99684-0250

BOX 245  
UNALASKA AK 99685-0245

BOX 127  
VALDEZ AK 99686-0127

BOX 869  
WRANGELL AK 99929-0869

BOX 426  
YAKUTAT AK 99689-0426