

SMALL  
CLAIMS  
INTERIM

**ALASKA  
SMALL CLAIMS  
HANDBOOK**

**FOR USE BY PLAINTIFFS AND  
DEFENDANTS IN  
SMALL CLAIMS CASES IN THE  
ALASKA COURT SYSTEM**

## INTRODUCTION

A large number of the disputes which arise from normal problems in society may go unresolved by the legal system because of the beliefs that courts and lawyers cost too much and the legal process is too complicated. Small claims courts let persons without legal training manage their own lawsuits to resolve these disputes in a speedy and inexpensive manner.

This handbook has been prepared to help you use the Alaska small claims system in the district and magistrate courts. The book is not a set of rules, but it explains most of the important parts of the small claims procedure. Some of the more important forms used in small claims are included, as are the current small claims rules. It should be pointed out that, except for certain cases which fall under Alaska's Landlord and Tenant Act, the small claims procedure can be used only for persons, whether plaintiff or defendant, who live in Alaska. Also, it should be emphasized that the small claims Complaint Form (Form SC-1) and Answer Form (Form SC-3) MUST be used in small claims cases whether one chooses to be represented by an attorney or not.

This handbook has one chapter (Chapter II) especially for persons who want to file small claims actions (plaintiffs), and one (Chapter III) for persons who are sued in small claims (defendants). The other parts of the handbook are written for both sides.

It cannot be repeated too often that one should NEVER refuse to accept a certified letter from the court. Even if you refuse a summons, you are considered VALIDLY SERVED by the court, just as if you had accepted it. You ignore it at your own peril, which might prove to be expensive.

Example Summons Form  
Small Claims Form SC - 2

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
AT ANCHORAGE

JAMES SMITH  
Plaintiff,  
vs.  
WILLIAM JONES  
Defendant(s)

CASE NO. JAN- 1978 -SC  
SUMMONS

TO: WILLIAM JONES  
ADDRESS: 111 E. 12th St.  
Fairbanks, Alaska 99701

The plaintiff has filed a small claims action against you. You are summoned and required to answer the complaint which accompanies this summons. If you do not answer the complaint, the court may enter a judgment against you for the amount claimed plus interest and court costs.

To answer the complaint, complete the attached ANSWER and mail or deliver it to the Small Claims Office at 303 K Street, Anchorage, Alaska 99501. Your answer must reach the court within 20 days after the day you receive this summons and complaint.

If your answer indicates disagreement with the plaintiff, the court will set a date for trial of this case at the above court. You may request to have the trial held in another court.

The suit the plaintiff filed against you is a civil action and you are not accused of a crime. If you lose this case, the plaintiff may ask only that the court take some of your wages, money or property to pay the judgment.

This is your copy of the summons and complaint.

July 10 19 78  
DATE

CLERK OF COURT

BY: Jane Adams  
DEPUTY CLERK

SC-2 (ANCH. 9/77)  
SUMMONS

Dist. Ct. Civ R 11(a)  
Civ R 4 AS 34.03.340

Be sure you get the full name of the person you are suing down correctly, as well as his complete address.

## TABLE OF CONTENTS

	Page
INTRODUCTION .....	i
CHAPTER I, GENERAL INFORMATION .....	1
CHAPTER II, HOW TO START A SMALL CLAIMS ACTION .....	5
CHAPTER III, WHAT TO DO IF SOMEONE FILES A SMALL CLAIM AGAINST YOU .....	10
CHAPTER IV, PREPARING FOR TRIAL .....	15
CHAPTER V, TRIAL .....	17
CHAPTER VI, AFTER TRIAL .....	19
CHAPTER VII, SPECIAL PROBLEMS .....	22
APENDIX A, SMALL CLAIMS RULES .....	25
APENDIX B, COURT LOCATIONS .....	29

This handbook was prepared in accordance with Small Claims Rule 21 by the Administrative Office, Alaska Court System, October, 1978.

COMPARISON CHART

COMPARISON OF PROCEDURES

	SMALL CLAIMS	FORMAL CIVIL
Filing Fee	\$5	\$25 in district court
Jury Trial	no	yes, if one is requested
Need For a Lawyer	usually no	usually yes
Formal Rules of Evidence Applied At Trial	no	yes
Necessary Forms Supplied by Court System	yes	no
Cost of Service of Process by Certified Mail	\$2	\$2 plus necessary postage, addressed envelope and completed postal forms
Service of Process Outside the State	Allowed only in cases arising under the Landlord-Tenant Act (AS 34.03). A non-resident landlord may be served as described in AS 34.03.340.	Allowed. Either personal service, service by mail or service by publication may be used with consent of the court.
Complexity of Procedures	There are approximately 15 to 20 court rules governing small claims procedure.	There are over 30 court rules governing formal civil procedure.

## CHAPTER I

### GENERAL INFORMATION

#### A. WHAT IS A SMALL CLAIM?

A small claim is a lawsuit where one person is suing another person for cash or property worth \$2,000 or less. However, not all suits where a person wants to collect less than \$2,000 can be "small claims." Some examples of suits which cannot be brought as small claims are suits over title to real property, or for false imprisonment, malicious prosecution, or defamation (when one person says or writes things which damage the reputation of someone else). These kinds of suits cannot be made small claims because the law regarding them is very complicated, and the simple small claims procedure would not give the people involved a fair trial.

#### B. MUST YOU USE THE SMALL CLAIMS PROCEDURE FOR CLAIMS LESS THAN \$2,000?

No. Any claim for any amount can be filed in the superior court or as a formal claim in the district court. You use small claims procedures only if you want to. Small claims procedures are intended to create a simple and quick way for people to sue other people for relatively small amounts of money. Because of the simple rules, most people do not need an attorney to make or defend a small claim, although you are allowed to have one represent you if you wish. You could represent yourself in other kinds of cases, but the procedures are much more technical and difficult.

#### C. WHERE CAN YOU FILE A SMALL CLAIM?

You can file a small claim in any district court of the State of Alaska. A district court is a court which is run by a district judge or magistrate. You cannot file a small claim in superior court. There are district courts in all major cities and many towns and villages. A list of district courts may be found at the end of this booklet.

#### D. WHO CAN FILE A SMALL CLAIM?

Anyone 19 years old or older can file a small claim. People under 19 years old must bring a parent or guardian over 19 years old with them to file suit and to go with them to the trial.

#### E. WHAT KIND OF CLAIMS CAN YOU FILE?

Many kinds of claims can be filed as small claims. Here are some examples:

1. If someone damages your car or some other property you own in an accident and refuses to pay you for the repairs, you can file a small claim against him.
2. If you buy an appliance or other product and it doesn't work, and the store refuses to fix it or give you your money back, you can file a small claim against the store.
3. If someone causes you physical injury and refuses to pay your doctor bills and other expenses, you can file a small claim against him.
4. If you rented an apartment or a house and gave the landlord a security deposit, and he refuses to return it after you move out (assuming you paid your rent and did not damage the apartment beyond normal wear and tear), you can file a small claim against the landlord.
5. If you rent something to someone and the renter damages it beyond the amount of the security deposit, you can file a small claim against the renter.
6. If you loan someone money, or have a contract to sell or buy something, and the other person does not pay or deliver the thing you bought, you can file a small claim against the person who broke the agreement.

There are many other examples of small claims. There is one kind of special suit that you should know about: an assignment of claims. An example of this would be where Person A owes Person B some money, and Person B sells or gives the IOU or note or right to collect the money to Person C. Person C must use a lawyer or legal intern to collect the money in a small claims suit. This applies whether Person C is a collection agency which buys a sale contract from a retailer or just a person who picks up somebody's IOU. (See Small Claims Rule 15 (c))

#### F. HOW MUCH DOES IT COST TO FILE A SMALL CLAIM?

You must pay a filing fee of \$5.00, plus \$2.00 for having the clerk of court serve a summons and complaint by

certified mail. You pay only one filing fee, (\$5.00) even if your complaint is against several defendants, but you must pay the \$2.00 service of process fee for service by mail for each defendant. If you win the lawsuit, you can ask that the defendant be required to pay you for these court costs.

If you want personal service of the papers on the defendant, you will have to pay the Alaska State Troopers or a private process server \$17.50, plus a minimum of \$2.50 for mileage.

#### G. WHAT IF THE DEFENDANT OWES YOU MORE THAN \$2,000?

Even if your claim is larger than the \$2,000 limit for small claims, you can still use the small claims procedure if you are willing to give up ("waive" in legal language) the amount over \$2,000. For instance, if the defendant owes you \$2,050 on a loan, you may want to file the claim for just \$2,000, giving up the additional \$50.00 in order to use the first, inexpensive small claims procedure. For larger amounts, you should see an attorney. Remember that interest and court costs do not count in the \$2,000 limit.

#### H. ALL ABOUT FORMS

Your district court has complete sets of printed forms available to you at no cost. Each form requires only that you check some boxes and fill in some blanks. Examples of some of the basic forms are included in this handbook. Even if an attorney handles your small claim, he must use the small claims complaint and answer form: (See Small Claims Rule 22 (c) ).

#### I. WHAT CAN AN A LAWYER DO FOR ME?

You can be represented by a lawyer in a small claim just as you can in any other case. Most people who file or defend small claims do not use lawyers.

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

Lawyer Referral Service  
Alaska Bar Association  
Phone: 272-0352

The lawyer referral service will give you the names and numbers of 3 lawyers in the closest community to you where lawyers are available. These lawyers will give you a one-half hour consultation for not more than \$25.00.

Also, your local Alaska Legal Services representative may be able to help you make a decision about your case. If you do not know how to contact your local representative, you can call Alaska Legal Services in Anchorage at 272-9431 and they will give you the information you need.

Numbers for other Alaska Legal Services offices are:

Bethel 453-2237	Barrow 852-2300 852-2311
Copper Center 822-3497	Dillingham 842-5653
Fairbanks 456-5401 452-5181	Galena 656-1209
Juneau 586-1209	Ketchikan 225-6420 225-6440
Kodiak 486-4178	Kotzebue 442-3398 442-3496
Nome 443-2951 443-2952	

J. WHERE CAN I GET MORE INFORMATION?

If you have questions which are not answered in this booklet, the magistrate or clerk of the court will help you understand the rules.

K. WHAT IF I CAN'T PAY FILING FEES?

If you cannot afford to pay a fee in small claims court, you may simply fill out a form called an "Affidavit of Indigency". Once the court accepts this, you do not have to pay any fees in the case. The affidavit must be under oath, and if you do not tell the truth in your affidavit, you can be prosecuted for perjury.

L. A WARNING ABOUT YOU MAIL.

**NEVER** refuse to accept a certified mail letter from a district court. When you refuse a summons, YOU ARE VALIDLY SERVED, just as if you accepted it. You are a party to the action and the other side can get a judgment against you. All you do is make it more difficult for yourself to answer. (See Small Claims Rule 11 (e) )

## CHAPTER II

### HOW TO START A SMALL CLAIMS ACTION IN DISTRICT COURT

#### A. SHOULD YOU SUE?

The Small Claims rules require that you must always make a demand to the defendant to give you the relief you want before you sue. It helps if the demand is in writing. Your problem may be solved at this stage if the defendant decides to give you the money you are owed rather than face a lawsuit.

Remember, however, that although a small claims action does not cost a lot to file in court, if you lose, you will have lost your court costs, and you may also have to pay the defendant's court costs. Lawsuits are not to be used merely to spite or to harrass people. Make sure the suit is worth your while.

If you honestly believe you have a good claim, and there is a reasonable chance you can prove it, you should file the suit. Do not be afraid to sue someone just because the agreement he or she broke was not in writing. Many such agreements or oral contracts are legally enforceable.

The question you should ask is whether you can show the judge the facts you need to 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.

You should also find out if the defendant has, or will have money to pay you if you win. It will waste you time and money to get a judgement against someone who will never be able to pay. Remember, the court will not give you your money if you win. You must collect it from the defendant.

#### B. SMALL CLAIM OR FORMAL ACTION?

Before you start the suit you must decide whether you want it treated as a small claim or as a formal action.

Advantages of a small claims action are that it is quicker, cheaper, more informal, and can be more convenient. (See chart on page iv near the beginning of this handbook).

#### One Thing You Give UP.

Normally, you have a constitutional right to a jury trial,

but if you file your case as a small claim you "waive" or give up that right. If you want a jury, you cannot use the small claims procedure and must file a formal action. (See Small Claims Rule 16 (a) )

#### One Important Thing to Remember.

If you file a small claim and the defendant makes a counter claim against you which you do not want treated as a small claim, you have the right to move the claim to formal proceedings. If a small claim gets moved from the Small Claims Court to the District or Superior Court, all prior waivers--of counsel, jury trial, amounts in excess of small claims jurisdiction--will no longer be in effect. The case becomes a whole new case under different rules.

#### C. WHERE TO SUE?

Your next task is to decide which district court is the right one. You cannot automatically make the defendant come to the court where you want to sue him. You must choose a court which is a proper location ("venue" in legal terms). The district court nearest where the defendant lives is always a proper place to sue. So is the court nearest where the defendant works. If you are suing a business, any place where the business has a store or an office or sends salesmen is a proper place. Finally, if the person you want to sue caused you personal injury (broke your arm or the like) or damaged some of your property, you can sue him where he did the thing that injured you or your property, regardless of where he lives. For example, if someone from Anchorage hits your car in Fairbanks, where you live, you can sue him in Fairbanks. This last example does not apply if the person just owes you money from a loan or sale.

If you file a suit and the defendant wants the case moved to another court location, you can oppose the move by sending form SC-5 to the court within 20 days from when the defendant's answer requests a change of venue.

#### D. FILING THE CLAIM

To file a small claim, go to the proper district court and get a copy of the complaint form (SC-1). Fill it out and give it to the clerk along with the proper fees. On occasion, the nearest district court may not be the appropriate one in which to file your complaint. In that instance, obtain the forms from the nearest court, fill them out, and then file by mail in the appropriate court, along with the necessary fees. (A list of courts where small claims may be filed is in the appendix of this handbook.)

The clerk or magistrate will check to make sure that

Example of Complaint Form (SC-1)

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
 AT Anchorage, Alaska ①  
Joseph Smith ②  
 Plaintiff,  
 vs. William Jones ③  
 Defendant(s)  
 CASE NO. 181-0000 (Small Claims)  
 COMPLAINT ④

Defendant is indebted to the plaintiff in the amount of \$ 350.00 ⑤  
 plus court costs and interest as a result of damaging my car  
while with his car. ⑥

which occurred at or near Anchorage, Alaska, on or about  
March 4, 1978 ⑧

Plaintiff has demanded relief from the defendant, but defendant has failed to comply.  
 Plaintiff requests the small claims procedure, gives up his right to a jury trial and formal procedure in this case, and waives all of this claim which exceeds \$1,000. If the court enters an order applying the formal Rules of Civil Procedure to this action, rather than the Small Claims Rules, 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 nearest to:

⑨ { } The residence or place of employment of defendant.  
 Where personal injury or property damage occurred.  
 Where the defendant does or solicits business.  
 (CHECK APPLICABLE BOXES)

July 10, 1978 DATE  
Joseph Smith PLAINTIFF (Signature)  
1803 5th Street MAILING ADDRESS  
Anchorage, Alaska 99510 CITY STATE ZIP  
386-9999 TELEPHONE

ORIGINALS OF SUPPORTING DOCUMENTS, FOR EXAMPLE, CHECKS, RECEIPTS, BILLS, NOTES, STATEMENT OF ACCOUNT, ETC., MUST BE ATTACHED. COPIES MUST BE SUPPLIED FOR EACH DEFENDANT.

1. Fill in the court location where you wish to sue.
2. Fill in your name here.
3. The name of the person you are suing here.
4. The clerk will fill in the file number.
5. Fill in the amount you are suing for here.
6. Tell why your are suing here.
7. Fill in the place where the incident occured here.
8. Fill in the date the incident occured here.
9. Fill in at which court you wish the case to be heard. In this example, even though the defendant lives and works in Fairbanks, Anchorage is where the property damage was done, and the plaintiff has the right to have the trial held here.
10. Your signature here, plus your complete address and phone number, and the date you signed the complaint.

Be sure you complete the form, including your true signature. Attach any supporting documents you might have; in this case estimates, of how much it cost to repair your fence would be useful. Be sure you have the correct name of the person you are suing and be able to supply the court with his correct address.

you have filled the complaint form out properly. You should have the following information available to fill out on the complaint before you go to court:

1. Your name and address and telephone number.
2. The name and address of the person or business you are suing.
3. A short, simple statement explaining what happened that makes you believe you have a right to sue.
4. The amount of money you are claiming or an exact description of the property you want to recover.

It is important to use the full, legal names (no nicknames) of people you sue and to spell them correctly.

If you don't get the names correct, you may not be able to collect anything, even if you eventually get a judgement in your favor. If you are suing a business, you should use the full business name. The Downtown Apartments may actually be the Downtown Anchorage Apartment Corporation, Inc. If the business sent you a letter, the full name often will be on it. Usually, the people who run the business will tell you its full name. If you can't find out the full name, you may sue under the common name the business is known by in the community. Then, at the trial, ask the person who represents the business to give the full name of the business. Then tell the court, "I want to amend my complaint to state that \_\_\_\_\_ (the full name) is the defendant."

Your other option is to write to the Department of Commerce, Corporations Section, Pouch D. Juneau, Alaska 99801 (or telephone 465-2531) and ask the Department of Commerce to give you the full corporate name and the name and address of the registered agent of the corporation. You can then use the full name and have the clerk of court serve the complaint on the registered agent. If you write to the Department of Commerce, you will have to give them the common name of the corporation and any information you have about where it does business. You should include a self-addressed, stamped, return envelope. There is no charge for the information from the Department. If the business has a popular name that is quite different from its legal name, or if it is not legally incorporated, the Department will not be able to find a legal name, and you will simply have to use the common name and amend your complaint later if you find out the legal name.

You should also be sure to give the correct address of all defendants. If the address is incorrect, the defendant will not get a copy of the complaint.

If it is difficult for you to go to the court to file a complaint, you may write to any district court to get a complaint form (no charge, but send a self-addressed, stamped, return envelope). Then mail the filled-out form, along with \$5.00 filing fee and \$2.00 for each defendant who must be served, to the district court where you want the trial to be held (see Part C above). You must be especially careful to fill out the complaint correctly since you will not be able to have the clerk or magistrate check it with you.

#### E. WHO CAN I SUE?

You can sue any business or corporation or any adult person (age 19 or over) who has not been declared legally incompetent. If the person you want to sue is younger than 19 or an adult who has been declared incompetent, you may name that person's parent or legal guardian. In such cases, you may wish to consider seeing an attorney.

#### F. WHO MUST I SUE?

If you are trying to obtain possession of some object, you must name as a defendant and have the complaint served on everybody who has a legal interest in the object. (See Small Claims Rule 14) If your case concerns an automobile accident, the driver should be a defendant. The owner of the car can be held liable only if he was the driver or was the driver's employer, or in a few other special cases (the car was being used by a member of the owner's family for a family purpose, or the owner was wrong to allow the driver to use the car). Don't think you must sue the owner--you may end up paying his court costs.

Remember you cannot sue over real property (land) in small claims court.

## CHAPTER III

### WHAT TO DO IF SOMEONE FILES A SMALL CLAIM AGAINST YOU

A small claim is not a criminal action. You cannot be put in jail if you lose the case (see page 22 for one exception). The person suing you (called the "plaintiff") only wants money or property.

If someone files a small claim complaint against you, you must be given a copy of the complaint, a summons which commands you to answer the complaint, a copy of this booklet, and the form you need to answer the complaint. Once you have been given these documents ("served with process") you are a defendant in the action, and YOU CANNOT AFFORD TO IGNORE IT. Lawsuits will not go away if you pay no attention to them. In fact, IF YOU DO NOTHING YOU WILL AUTOMATICALLY LOSE. You also cannot refuse to accept service, either in person or by mail. The court will treat you as if you accepted service even if you refuse.

You should read the complaint carefully and begin to keep a notebook of everything you can remember about the incident or transaction which caused the plaintiff to sue you. DO NOT JUST QUICKLY SEND OFF A RESPONSE. Wait until the natural surprise, anger, and dismay over being sued has gone away and make a thoughtful decision about what to do. Remember, though, you must get your answer to the court within 20 days after you receive the complaint.

#### A. IF YOU AGREE WITH WHAT THE PLAINTIFF SAYS.

Sometimes people file lawsuits when there really is no dispute to be resolved by the court. It may be that you owe the money the plaintiff asks for and are willing and able to pay it. In such cases, you should not pay the plaintiff directly, without informing the court you have done so. Otherwise, the court will not know you paid and the suit will continue.

NEVER SIMPLY IGNORE THE COMPLAINT. Then the court will enter what is called a default judgement against you, and later the plaintiff may take action to force you to pay. If that happens, some of your property may be tied up for a while, and you will have to pay extra costs.

The safest thing to do if you agree with the complaint is to use the answer form and check the box that says: "I agree with what the plaintiff says in his complaint." Pay the money through the court so that the lawsuit will be ended, the judgement will be satisfied, and, if there was a written agreement that gave rise to the debt, the agreement

can be cancelled. That means the whole legal claim is ended, and nobody can bother you with it again.

**B. IF YOU AGREE WITH WHAT THE PLAINTIFF SAYS, BUT YOU CAN'T AFFORD TO PAY IT ALL RIGHT AWAY**

The district court can make a judgement payable in installments. YOU MUST ASK TO HAVE THIS DONE. Otherwise, if you just let a default be entered, the entire judgment will be due immediately, and the plaintiff can keep having writs of execution issued to take your wages and property until the judgment is paid.

**C. IF YOU DISAGREE WITH WHAT THE PLAINTIFF SAYS.**

When you disagree with what the plaintiff claims, write out your reasons for disagreeing in the proper place on the answer form. If you need more space to write your answer, you can attach extra sheets to the form.

Some of the reasons you might disagree with a claim are:

1. You have already paid. (if this is your defense, it is always best to attach a copy of your cancelled check, receipt, or whatever else proves you paid the claim. Save the original for evidence at trial.)
2. If you are sued for causing injury or property damage in an accident, it may be the accident was not solely or wholly your fault.
3. If you are sued for not paying for something you bought, your defense may be that the thing doesn't work, or the seller misled you, or never delivered the item.
4. If you are being sued by a tenant for the return of a cleaning deposit, your defense may be that the tenant damaged your property.
5. If you are sued by a landlord for rent, your defense may be that the place you were renting was unfit for human habitation because the landlord failed to repair something that made it impossible for you to use the place.
6. If you are sued as a result of your intentionallly striking someone, your defense may be that you hit the person in self-defense.

Example of FORM SC-3  
The Answer Form

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

AT ANCHORAGE, ALASKA (1)

Joseph Smith (2)  
Plaintiff,

vs.  
William Jones (3)  
Defendant(s)

(4)  
CASE NO. 3 AN-0000 (Small Claims)  
ANSWER, COUNTERCLAIM, REQUEST  
FOR CHANGE OF PLACE OF TRIAL

Defendant answers the complaint as follows:

- ( ) I agree with what the plaintiff claims.
- (5) (✓) I owe the plaintiff only \$50 <sup>net</sup> because that is ALL HIS FENCE COST TO BRING
- (6) (✓) I owe him nothing because: I already paid him the \$50 %.
- (7) ( ) (COUNTERCLAIM) The plaintiff owes me 163<sup>00/100</sup> because: he caused the accident which made me RUN OVER HIS FENCE

NOTE: A plaintiff against whom a counterclaim is filed shall have ten days after such claim is mailed to him to demand that formal District Court rules apply. If he does so, this action will no longer be treated as a small claim.

Defendant requests the following procedure:

- (8) (✓) SMALL CLAIMS: I give up my rights to a jury trial and formal procedure and waive all this claim which exceeds \$2,000. If the court orders an order applying the formal Rules of Civil Procedure to this action, rather than Small Claims Rules, this waiver shall be null and void.
- ( ) FORMAL RULES OF CIVIL PROCEDURE.

If it would be expensive or difficult for you or your witnesses to attend trial at the District Court indicated on the summons, you may request the court to change the place of trial. To request this change, complete the following: I request that the court change the place of trial to Fairbanks, Alaska, because (9)

Time working on the pipeline and it would be too expensive for me to go to Anchorage.

Date: 11-13-87A (10)  
Signature: William Jones  
Address: 111 W 12th St.  
Fairbanks Alaska 99701  
City State Zip  
443-8888  
Telephone

EXHIBITING DOCUMENTS MUST BE ATTACHED

DC-1 (7/78)  
ANSWER, COUNTERCLAIM, AND  
REQUEST FOR CHANGE OF PLACE OF TRIAL  
Dist. Ct. Civ 8 (3)(b) & (c)  
Dist. Ct. Civ 7  
Dist. Ct. Civ 7 (1)(a)

1. If not already filled out, put name of court location that appears on the summons form.
2. If not already filled in, put in the name of the person who is suing you.
3. If not already filled in, put in your name here.
4. If not already filled in, put in the case number as it appears on the summons form here.
5. If you know that it only cost the person suing you \$50 to repair his fence, instead of the \$350 he is asking for, explain here.
6. Or, if you have already paid the person, explain here.
7. If you think the person owes you money, explain here.
8. If you chose to go through the small claims process, check here. If you wish your case tried more formally in the District Court, check the space beside "FORMAL RULES."
9. If you have difficulty reaching the court chosen by the person suing you, fill out this space naming another location and explain why. Merely filling out this box does not guarantee the case will be moved to the court of your choice.
10. Sign your full name, address, and telephone number and the date you signed the answer form.

Be sure you get all information down on the form correctly. If you need more space, attach additional sheets to the form. Begin to collect evidence that can be used in your defense or that will support your counterclaim and bring it to court with you. Be sure to show in court on time with all the material you believe you will need.

7. With any kind of claim your defense might be that the plaintiff is asking too much.

When filing your answer, remember to STATE ENOUGH OF YOUR VERSION OF THE FACTS TO SHOW THAT YOU HAVE AT LEAST ONE DEFENSE. If you state one good defense and later find out that you have another one, too, you can use both at trial. If you don't state any defenses, the court can enter judgment against you without trial.

If you state as your only defense that you can't pay, you may request a hearing on whether the judgment can be payable in installments. Inability to pay is not a legal defense to a claim.

#### E. BY SMALL CLAIMS RULES OR BY FORMAL RULES?

The second paragraph of the Answer Form (SC-3) concerns the kind of procedure you want used at your trial. Small claims actions are designed to be simple, speedy affairs. You and the other party usually present your own cases without lawyers. There is no jury. The judge is free to listen to any reliable evidence; there are no technical rules of evidence. The trial of formal action is very different. Attorneys normally represent both sides. There are technical rules of procedure and evidence. These rules are designed to make sure that neither side can take advantage of the other, but they are complicated. It is very difficult to represent yourself in a formal proceeding, though you can have a jury in a formal action.

You must decide if you want your case handled as a small claim or a formal action. See page iv of this booklet about the advantages and disadvantages of the small claims procedures.

If you decide you want a formal proceeding, you must check the appropriate box in the Answer Form. If you check the "Small Claims" box instead, you give up the right to have a jury.

#### F. WHERE WILL THE TRIAL BE?

The last paragraph on the Answer Form (SC-3) allows you to request that the place of the trial be changed. There are three possible places a small claims trial can be held:

- 1) the district court nearest where you live;
- 2) the district court nearest where you work;
- 3) the district court nearest the place where the plaintiff claims you did something that hurt him or his property.

(If you are being sued as a business or corporation you may also be sued wherever you do business.)

If the case is scheduled to be tried in the third place, you can move it only if you can show that it would cause you "unnecessary expense" to go there. In order to do that, you must let the court know how much it would cost you to go to trial and you must suggest some other place to hold the trial which will not cost too much to either you or the plaintiff.

If the place where trial is going to be held does not fit any of the three places named, YOU ALWAYS HAVE THE RIGHT TO MOVE IT TO ONE OF THE RIGHT PLACES.

REMEMBER THAT THE THIRD KIND OF PROPER PLACE (where you supposedly hurt the plaintiff or his property) IS ONLY PROPER IN SUITS OVER PERSONAL INJURIES OR PROPERTY DAMAGE. IT IS NOT A PROPER PLACE IF THE PLAINTIFF MERELY CLAIMS YOU FAILED TO PAY OFF A DEBT.

To move the trial: fill in the name of the place you want the trial moved to in the last paragraph on the Answer Form (SC-3) and then explain the reasons for your request in the space provided.

#### G. WHAT IF THE PLAINTIFF OWES YOU MONEY?

Suppose the plaintiff wants \$300 for repairs to his car because you hit it. You may think the whole accident was his fault (in accidents, the person at fault pays), and you had \$500 in repairs. What do you do?

You make a counterclaim by filling out the appropriate section of the Answer Form. Since the plaintiff is already in court participating in the lawsuit, you don't have to file an original complaint or pay a fee. You only pay for mailing the answer to him.

You have to make a short, simple statement of the facts which show why you have a counterclaim. Then state the amount of your claim or the description of the property you want and attach it to your answer. Mail the completed answer form back to the court. (It would be helpful to read the part of this booklet about filing a small claim before filling out the counterclaim part of your answer.)

If your counterclaim is for more than \$2,000 or you are asking for the sort of remedy the court cannot give in a small claims action, you should see your lawyer or include a waiver of the excess amount in your answer.

## CHAPTER IV

### PREPARING FOR TRIAL FOR PLAINTIFFS AND DEFENDANTS

Once the complaint and answer are filed, most small claim 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. Sometimes you will receive an order stating that the case will be governed by the formal Civil Rules, instead of the Small Claims Rules. If you do, you should consult with an attorney immediately. If the action has only been transferred to a different location, it is still a small claims case.

#### A. GETTING THE EVIDENCE TOGETHER.

The most important thing to do while waiting for trial is to get your evidence together. If you have any papers, legal documents, photographs, or other materials that may assist you with your case, you should collect them in a central place and be ready to take them to trial. Examples of material which might be needed are a contract, a bill of sale, a receipt, a cancelled check, a letter about the case from the other party, a copy of a money order, an estimate or bill for repairs, etc.

If the suit involves some small item which does not work--a toaster or radio or clothing or even a small out-board motor--plan to bring it with you. It is also helpful to take pictures of bigger things--a damaged car or boat, an accident scene, etc.

Another source of facts is witnesses. A witness is anyone who personally knows something about your case (gossip won't do). Examples are: a person who saw an accident; a person who overheard the statements made when you and the other party to the suit made an agreement that has something to do with the suit; a person who saw damaged goods when they were first delivered; the clerk who sold you something or accepted your payment. (If you are being sued by a business, usually only the manager or the credit manager will come to court. If you want someone else in the business to say something in court, you must make that person come to the trial by arranging with the court to have the person ordered to attend.)

Sometimes you may want to have a special witness like a mechanic or appliance repairman tell the judge how much something is damaged or whether it was defective. This kind of witness must have a chance to see the thing he is talking about before he can testify. In automobile accident cases, it is usually enough to bring several repair estimates.

## B. GETTING READY FOR TRIAL.

When you have found all your evidence, you should make a list of it and make a short summary of what you expect witnesses to say. You should also write down a short statement of what you want to say to the judge. You should use your list and summaries at trial to make sure everything you wanted to say gets heard by the judge. **EITHER AS PLAINTIFF OR DEFENDANT, DO NOT SAY YOU ARE FINISHED WITH A TRIAL UNLESS YOU HAVE CHECKED YOUR LIST TO MAKE SURE YOU HAVE DONE EVERYTHING YOU WANTED TO DO.**

## D. WHAT ABOUT SETTLEMENTS?

A settlement is an agreement by the plaintiff and the defendant to end a suit. Ordinarily, a settlement happens because the defendant offers to pay part of what the plaintiff wants. The plaintiff then accepts less than his full claim in order to avoid the risk and time of trial. Both parties must remember that the case is over once it is settled. The plaintiff can't get any more money, and the defendant can't get his back. Two things to think about before offering or accepting a settlement:

1. How good is your chance of winning?
2. How much will it cost you to go to trial, including time off work and the delay in getting your money if you go to trial?

Here are some important rules for both parties:

1. **IF YOU ARE A PLAINTIFF, NEVER CONSIDER A CASE SETTLED OR SIGN A PAPER SAYING IT IS UNLESS YOU HAVE RECEIVED PAYMENT OR THE COURT HAS ENTERED A JUDGEMENT THAT YOU AND THE DEFENDANT HAVE AGREED TO.**
2. **IF YOU ARE A DEFENDANT, DO NOT PAY UNLESS YOU HAVE MADE A SPECIFIC AGREEMENT WITH THE PLAINTIFF, THE SUIT HAS BEEN ENDED BY A JUDGMENT OR DISMISSAL, AND ANY CONTRACT THE PLAINTIFF WAS SUING ON HAS BEEN CANCELLED.**

## CHAPTER V

### TRIAL FOR PLAINTIFFS AND DEFENDANTS

Try to get to court a little early on the day of your trial. It will help to become familiar with the courtroom and its contents. There are no strict rules of dress, but you should be clean and neat and act respectfully toward the court.

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. Most likely, there will be several cases scheduled for the same time as yours. If you can't tell from your notice of trial which courtroom your trial will be in, go to the clerk of the court and ask.

When you get to the courtroom where your trial will be held, 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. Look or listen to determine where your case is "in line." When the judge calls your case, tell him you are ready to present your case. The judge will call you to come toward the front of the courtroom, past the spectators' rails. There will be tables for you and the other party to use while you are presenting your case.

Usually, the best way to start a trial is to tell your part of the story by yourself. (The plaintiff goes first.) You will be required to take an oath to tell the truth. Then just tell the judge your side of the case. The judge will probably ask you questions to help him understand what happened. He is not trying to trick you. You should answer his questions clearly, honestly, and directly. The other party also has the right to ask you questions once you have spoken. So long as the questions have something to do with the case, you must answer. You should answer clearly and honestly and without getting angry.

While you are telling your story, you should show the judge any evidence you want considered. If you are trying to prove that the defendant ran through a stop sign, you might say, "There is a stop sign of Fifth Street in the direction the defendant was going. Here is a picture I took of the intersection looking the way the defendant was going, and it shows the stop sign. I want the court to use the picture as evidence." Another example: "The plaintiff says I didn't pay, but I did. Here is the cancelled check I got back from the bank. It shows that I paid the plaintiff \$45.00 last month, and the plaintiff signed the back of it. I want the court to use this cancelled check as evidence." Or: "This is the toaster the plaintiff is trying to collect

for, I got it home and plugged it in and it wouldn't work. I want to test it here in court and prove it doesn't work, and I want the court to use the toaster and the test as evidence."

When you have told your side of the story and given the court your evidence, you should call any witnesses you have. Each witness will be asked to take an oath. Then he is ready to testify. You may ask the witness any questions you want or you may just ask him to tell what he knows about the case.

When you have said all you have to say, introduced all your evidence and called all your witnesses, you have finished making your case. Tell the court you have completed your case. DO NOT TELL THE COURT YOU ARE THROUGH WITH YOUR CASE UNTIL YOU HAVE CHECKED YOUR LIST OF EVIDENCE AND YOUR SUMMARY OF THE CASE TO MAKE SURE YOU HAVE DONE EVERYTHING.

When the other party presents his side of the case, you should sit quietly at your side of the table. Comments and questions are not proper until the person who is speaking to the judge has finished all of his presentation, and the judge tells you you may "cross-examine." "Cross-examination" is the process of asking the other party or his witness for information he did not give by himself. Your questions should be simple and direct. A small claims action is not the place to try to be Perry Mason or to try to fool people with tricky questions. Just get the important facts.

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

At the end of the trial, the judge will often announce his decision. If you are the defendant and you lose and you want to pay the plaintiff in installments, this is the time to tell the judge.

Sometimes the judge will tell you he needs more time to study or investigate something. This is called "taking the case under advisement." If this happens, and there is a chance you might lose, and you want to pay the judgment in installments, it is best to tell the judge at this time.

Usually, the judge will want to keep the evidence for at least a few days in case the losing party wants to appeal.

You may find when you come to court that the other side has an attorney. Do not be afraid. Just relax and tell your story to the judge just as you would have if there was no attorney.

## CHAPTER VI

### AFTER TRIAL -- FOR PLAINTIFFS AND DEFENDANTS

The judge will decide who wins the case. He may award either party all, or part, or nothing of the party's claim, depending on what the facts and law demand. The court's decision is called a "judgment." The judge will fill out a judgment form and mail it to the parties.

If you are the losing party, and if the judgment was for more than \$50, you may appeal the judgment to the superior court. To do so, you must file a notice of appeal in the district court within 30 days from the date the judgment was entered (the date next to the judge's signature on the bottom of the judgment form). Appeals are complicated, and you may wish to see an attorney if you want to appeal.

Even if the court gave you some of your demand, you may still appeal if you think you were entitled to more.

If you are the winning party, you should contact the other party and ask for payment. If the other person refuses to pay, then you can take a number of steps to force him to pay.

#### A. EXECUTION.

"Execution" does not, as some people think, mean the death penalty. It simply means carrying out the judgment of a court. To obtain enforcement of a small claims judgment, you can do several things to get the losing party's money or property. You must wait two days after the judgment is entered to start any of them.

To obtain payment of the judgment, you may: 1) attach his bank account to get cash; 2) garnish his wages; 3) attach his real or personal property and have it sold for cash; or 4) file the judgment as a lien against his real property (land).

All the above require a certified copy of the judgment issued by a clerk of court or magistrate. Executions, especially when you seize property to be sold, require the help of a state trooper or process server. There is a minimum \$22.50 fee. This fee is added to the amount of your judgment. In the end you may collect it from the defendant, but you must pay it in advance. You should be sure you will get at least \$22.50 from the execution. You must pay a \$5.00 judgment as a lien. You file it with the recorder of any recording district but it is effective only when the defendant owns land. If you decide to file the judgment as a lien on

the defendant's property, you must first determine what property he owns.

If you are not sure what property, if any, the debtor owns, you can force him to come to court and tell you. This is called a "judgment debtor examination", and it requires the help of the magistrate or clerk of court.

#### B. RESISTING EXECUTION.

If you are the losing party, you can save a number of kinds of property from execution. The state statutes provide for "exemptions"--certain things which cannot be taken by execution. IN ORDER TO MAKE USE OF AN EXEMPTION, HOWEVER, YOU MUST CLAIM IT. IF YOU DO NOT CLAIM AN EXEMPTION, THE PROPERTY WILL STILL BE EXECUTED UPON. The district court has a booklet and forms which tell you more about exemptions.

Under State law, the maximum part of your income for any week which is subject to execution may not exceed (A) 25 percent of your disposable income for that week, or (B) the amount by which your disposable income for that week exceeds \$114, whichever is less.

A simplified list of other things you can protect from seizure if you claim them as exceptions includes:

- 1) books, pictures and musical instruments up to \$300;
- 2) all necessary wearing apparel plus watches or jewelry up to \$200;
- 3) tools, records, books, furniture or nearly any other item necessary to your trade, up to \$2,500;
- 4) household items and animals (including six months food for the animals) valued up to \$1,200;
- 5) six months food for you and your family;
- 6) your house (this is a very complicated exemption, and if you own real property, you should see a lawyer about it);
- 7) A liquor license you own.

C. THE "JUDGMENT DEBTOR EXAMINATION".

Sometimes the losing party will be served a paper which requires him to go to court for a "judement debtor examination." That is a hearing where the defendant must tell the plaintiff how much money he makes and what property he owns. If you do not go to that hearing, the court will issue a warrant for your arrest and make you go to it. If you forgot to ask for a change of venue and the hearing is in a court far away, write to the court to ask to have it moved. IF IT IS TOO LATE AND YOU ARE ARRESTED, ASK THE DISTRICT JUDGE OR MAGISTRATE WHERE YOU ARE ARRESTED TO DO THE EXAMINATION AND SEND THE RECORD TO THE COURT THAT ISSUED THE WARRANT.

## CHAPTER VII

### SOME SPECIAL PROBLEMS

#### A. WHAT IF THE DEFENDANT DOESN'T ANSWER?

If the complaint is properly served on the defendant and he does not answer, that is called a default. You should fill out a form SC-8, which asks the court to enter a default judgment in your favor. A default judgment ends the case just like any other judgement, and you win.

HOWEVER, IN ORDER TO GET A DEFAULT JUDGMENT YOU MUST SATISFY THE COURT THAT YOUR CLAIM WAS LEGITIMATE. To do that, fill out the information called for on the form. You must also be certain that the defendant is not in the active military service, is not under age 19, and has not been declared legally incompetent. You must take an oath that what you say on the form SC-8 is true, and you must sign that oath in front of a notary public, a clerk of court, or a magistrate.

Even after you do fill out form SC-8, the judge may still require you to appear before him if some facts are not clear. But you need not give the defendant any more notices until you want to enforce the judgment.

#### B. WHAT IF THE DEFENDANT FAILS TO COME TO TRIAL?

If the defendant answers but fails to come to trial, he is in default. You can do the same thing as you would if he did not answer. It is easier, of course, to tell the judge or magistrate, under oath, the same information as that contained in the form SC-8, at the time scheduled for trial. The court may, however, consider anything the defendant submitted with his answer.

#### C. WHAT IF THE PLAINTIFF FAILS TO COME TO TRIAL?

If you are a defendant, and when the case is called for trial the plaintiff is not there, you may ask that the plaintiff be held in default. You need not prove anything; the action is simply dismissed, unless your answer admitted that you owed the money. If you made a counterclaim, you must prove it, just like a complaint.

#### D. WHAT IF YOU CAN'T COME TO TRIAL?

If you know several days before trial that you can't come to trial, first try calling the other party and asking him to agree to a postponement. Then go see or call the

clerk of court or magistrate and explain that the other party has agreed to a postponement. It is best if the other party calls or sees the clerk about the postponement also. If the other party will not agree, you should make arrangements to see the district judge or magistrate to explain the problem and ask for a postponement. Use form SC-23, Request for Continuance, when asking for postponement.

#### E. WHAT IF A DEFAULT IS ENTERED AGAINST YOU?

If you find that you have lost a suit by default judgment but you did not even know the suit was going on, or you miss the trial because of an emergency, or for any other reason you think a default judgment was unfairly entered against you, you can ask to reopen the case. You should simply write a letter to the court, with a copy to the other party, explaining why the case ought to be reopened. To reopen a case, you must always state facts which show that you could win if the case went to trial. In addition, you should be able to show:

- 1) there was a mistake about the trial date on a form that was sent to you, or you never received the trial notice, or even if the notice was in your mail, you were away and didn't get it;
- 2) you never received a summons and complaint;
- 3) you believed for some other reason the trial was on a different date, or the suit was called off, and that is why you didn't do anything;
- 4) you didn't pay any attention to the suit because you paid the claim when you got the papers (or before);
- 5) you had an emergency that made it impossible for you either to attend trial or to tell the court in advance that you could not attend; or
- 6) any other reason which shows that the default was plainly unfair.

The help of an attorney is often worthwhile in preparing to reopen a default judgment.

#### F. WHAT DO I DO IF I AM A PLAINTIFF AND THE DEFENDANT MAKES A COUNTERCLAIM?

YOU DO NOT NEED TO FILE A REPLY. All you must do is decide whether you still want the case tried as a small claim. If you do not, you have 10 days from the day you receive the answer to demand the case be treated under the formal Civil Rules. The claim and the counterclaim will be tried together if you leave them in small claims, so be prepared for trial of both.

NOTES

APPENDIX A  
ALASKA SMALL CLAIMS RULES

THE FOLLOWING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

## Rule 8. Scope and Applicability.

(a) Procedure in small claim 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 his right to recover the excess amount and elect to proceed under this Part II by filing a written waiver of the excess amount.

(c) The court may, on its own motion, order the rules in Part I to apply in any action when important or difficult questions of fact or law are involved. (Supreme Court Order 225 effective February 2, 1978)

## 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. (Supreme Court Order 225 effective February 2, 1978)

## Rule 10. Pleadings.

(a) A small claim action is commenced by filing a complaint. 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. 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 his 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, he 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 him to withdraw his election to proceed under Part II, and failure to withdraw his election waives his right to trial by jury and formal procedure as to the counterclaim.

(d) A defendant who does not wish to contest the claim against him may default by failing to file an answer or may file an answer agreeing with the complaint. The latter shall be a sufficient basis for entry of judgment on the pleadings in a small claim action. (Supreme Court Order 225 effective February 2, 1978)

## Rule 11. Process.

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

(1) Service by publication or posting shall not be allowed; and

(2) Service outside the state shall be allowed only in accordance with the Landlord-Tenant Act, AS 34.03.340.

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

(c) The summons and complaint may be served within the state by registered or certified mail. Copies of the summons and complaint shall be mailed by the district judge, magistrate or clerk for delivery only to the party to whom the summons is directed. A delivery receipt returnable to the district court shall be required and must be signed by the party to whom the summons is directed. 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 43(a), (b), (c), (e), and (f), concerning subpoenas is incorporated in these rules for the purpose of securing the attendance of witnesses at trial. (Supreme Court Order 225 effective February 2, 1978; amended by Supreme Court Order 264 effective February 13, 1977)

## 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. (Supreme Court Order 225 effective February 2, 1978)

### Rule 13. Defenses and Objections—When and How Presented.

(a) A defendant shall file or state his answer within 20 days after service of the summons and complaint upon him. 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. (Supreme Court Order 225 effective February 2, 1976)

### 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 person 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. (Supreme Court Order 225 effective February 2, 1976)

### Rule 15. Attorneys—Interns.

(a) A corporation may be represented 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 a 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. (Supreme Court Order 225 effective February 2, 1976)

### Rule 16. Trial.

(a) All small claim actions shall be tried to the court without a jury.

(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 nor more than 30 days from the date the court mails notice of the trial date to the parties. (Supreme Court Order 225 effective February 2, 1976)

### Rule 17. Judgment.

(a) If the defendant fails to answer the complaint within 20 days after service of process or fails to attend trial, he is in default. Judgment by default shall then enter only upon proof under oath made upon personal knowledge that the defendant is not an infant or otherwise incompetent and that he is not in the active military service of the United States. 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 its claim for relief. If the defendant answers but fails to appear at trial, the court may nevertheless consider any relevant and material evidence filed with the answer.

(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, he 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 his defense and his 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) Judgment of dismissal with or without prejudice may be entered 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.

(e) 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.

(f) 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.

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

(h) The court 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.

(i) Notice of entry of judgment shall be mailed on the day of entry by the court to all parties to the action. (Supreme Court Order 225 effective February 2, 1976)

### Rule 18. Appeal.

Either party may appeal a judgment or an order refusing to relieve any party from a default where the amount in controversy exceeds \$9) exclusive of costs. 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. (Supreme Court Order 225 effective February 2, 1976)

### Rule 19. Relief from Judgment.

Civil Rule 60 applies to motions for relief from judgment in small claim actions. (Supreme Court Order 225 effective February 2, 1976)

### 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 entry of 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 6, Rules of Administration, 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. (Supreme Court Order 225 effective February 2, 1976)

### 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 should be had to the Alaska Small Claim Handbook, which shall be available for distribution to prospective litigants at all seats 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, 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 his witnessed mark. The clerk shall note upon its face the method of preparing the pleading under this rule. (Supreme Court Order 225 effective February 2, 1976)

### Rule 22. Legal Effect of Rules.

(a) The forms published by the supreme court 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 supreme court to accompany these rules is not a rule of court. (Supreme Court Order 225 effective February 2, 1976)

(c) The forms for the complaint and the answer published by the administrative director shall be used by the parties. All other such forms are illustrative and not mandatory.

THE PRECEDING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

APPENDIX B  
COURT LOCATIONS

FIRST JUDICIAL DISTRICT

Juneau  
State Court-Office Bldg.  
Pouch U  
Juneau, AK 99811

Ketchikan  
415 Main St.  
Ketchikan, AK 99901

Sitka  
Court and Office Bldg.  
Box 910  
Sitka, AK 99835

Wrangell  
Post Office Bulding  
Box 869  
Wrangell, AK 99902

Petersburg  
North First and F Street  
Petersburg, AK 99933

Craig  
State Building  
Box 4  
Craig, AK 99921

Haines  
Schmable Building  
Box D  
Haines, AK 99827

Hoonah  
City Hall  
Box 260  
Hoonah, AK 99829

Kake  
Community Building  
Box 163  
Kake, AK 99830

Pelican  
Box 743  
Pelican, AK 99832

Skagway  
North First and F Street  
Box 495  
Skagway, AK 99840

Yakutat  
Old School Building  
Box 354  
Yakutat, AK 99689

SECOND JUDICIAL DISTRICT

Nome  
Post Office Building  
Box 431  
Nome, AK 99762

Kotzebue  
City Building  
Box 317  
Kotzebue, AK 99752

Barrow  
Court Building  
Box 270  
Barrow, AK 99723

Point Hope  
Criminal Justice Facility  
Box 68  
Pt. Hope, AK 99776

Gambell  
Criminal Justice Facility  
Gambell, AK 99724

Savoonga  
Criminal Justice Facility  
Savoonga, AK 99762

Kiana  
Criminal Justice Facility  
Kiana, AK 99749

Noorvik  
Criminal Justice Facility  
Noorvik, AK 99763

Selawik  
Box 57  
Selawik, AK 99770

SECOND JUDICIAL DISTRICT (Continued)

St. Marys  
Criminal Justice Facility  
Box 134  
St. Marys, AK 99658

Hooper Bay  
Criminal Justice Facility  
Hooper Bay, AK 99604

Emmonak  
Criminal Justice Facility  
Emmonak, AK 99681

Mountain Village  
Box 184  
Mt. Village, AK 99632

Unalakleet  
Unalakleet, AK 99684

Wales  
Wales, AK 99783

THIRD JUDICIAL DISTRICT

Anchorage  
303 K Street  
Anchorage, AK 99501

Kenai  
Drawer I  
State Court-Office Building  
Kenai, AK 99611

Kodiak  
202 Marine Way  
Box 1367  
Kodiak, AK 99615

Homer  
State Building  
Box 136  
Homer, AK 99603

Valdez  
State Court and Office Bldg.  
Box 127  
Valdez, AK 99686

Cordova  
Post Office Building  
Box 696  
Cordova, AK 99574

Glennallen  
State Building  
Box 86  
Glennallen, AK 99588

Seward  
Municipal Building  
box 596  
Seward, AK 99664

Seldovia  
Drawer H  
Seldovia, AK 99663

Dillingham  
State Building  
Box 194  
Dillingham, AK 99576

Naknek  
Borough Building  
Naknek, AK 99633

Sand Point  
Sand Point, AK 99661

Cold Bay  
Cold Bay Airport  
Box 8  
Cold Bay, AK 99571

Unalaska  
Box 7  
Unalaska, AK 99685

St. Paul Island  
Box 95  
St. Paul Is. 99660

FOURTH JUDICIAL DISTRICT

Fairbanks  
604 Barnette St.  
Fairbanks, AK 99701

Bethel  
Court Building  
Bethel, AK 99559

Delta Junction  
State Building  
Box 401  
Delta Jct., AK 99737

Fort Yukon  
Combined Facility  
Box 152  
Ft. Yukon, AK 99740

Tok  
State Building  
Box 187  
Tok, AK 99780

Aniak  
Criminal Justice Facility  
Aniak, AK 99557

Galena  
Criminal Justice Facility  
Box 167  
Galena, AK 99741

Nenana  
Box 177  
Nenana, AK 99760

Rampart  
Rampart, AK 99767

Kasigluk  
Kasigluk, AK 99609

Tununak  
Box 47  
Tununak, AK 99681

Mekoryuk  
Criminal Justice Facility  
Mekoryuk, AK 99630

To: Charlie  
From: Peggy *WMP*  
Date: April 19, 1979  
Re: Small Claims Court Statistics-Request.  
Sources for this Memo: Rick Berrier, Court System Liason Person &  
Alaska Statutes. Also Susan Burke, Court System.

1. Percent District Court Filings.

Note: District Court - normal civil procedure - jurisdictional amount = \$10,000 or less.

Small Claims Court, which is a function of the District Court, has a jurisdictional amount of \$2000. This figure was raised from \$1000 by the Legislature in 1978. AS 22.15.040.

Small claims matters are heard by magistrates and district court judges.

Jurisdiction of District Court not include actions of an equitable nature. Jurisdiction includes: violations, misdemeanors, writs of habeas corpus.

2. Days between filing and disposition.

Why does it take 24 more days to dispose a small claims matter in Anchorage than other civil matters:

A. Staff - there are: 8 magistrates in Anchorage\*  
4 " " Fairbanks  
1 magistrate in Juneau

(these figures were provided by Berrier and Susan Burke and were their estimate--need to confirm)

\*5 of the magistrates in Anchorage do night court - bail setting, and rotate back into day work on a schedule permitting them to adjust to the difference in work hours.

B. Case load - note the statistics on filings per month: Anchorage has 5 times the case load of either Juneau or Fairbanks.

3. Percent disposition for the Plaintiff.

At this point I can't surmise why these varying results are occurring.

A. Judges could be a factor.

B. Presence of attorney could be a factor.

4. Why do Small Claims take longer to dispose when these claims do not go to trial.

The statistics provided do not indicate that these actions have been joined. For example, if the statistics are based on the filing of a complaint, those cases where the defendant is never served and the case is ultimately dismissed because of that fact, would skew the results, possibly accounting for the longer disposition time for those claims not going to trial. Other potential factors:

- A. The parties could settle the case, but fail to inform the court.
- B. The plaintiff could be dragging his heels, ie, the defendant does not answer the law suit, but the plaintiff takes a great deal of time to obtain his default judgement.
- C. Cases which are not pursued by the plaintiff-or moved to be dismissed by the defendant-are ultimately dismissed by the Court. This is done pursuant to Civil Rule 41 (e). There it is required that the Court review its entire docket and dismiss those cases in which nothing has been done for a year. This action by the court is called "the call of the Calendar" and notice is provided to attorneys or parties, pro se. In accordance with the court rule, the court must do this at least semi-annually. If some judges are doing this more frequently than the rule requires, it could effect the statistics.

5. Conclusions. I realize that this matter is a part of our interim project, but I wanted to respond to your request to me on this matter. I shall keep a copy of this for our interim project.

Obviously my remarks herein are cursory, but I hope they are at least responsive to your initial work request.

*cc - given to Rocky for interim coordination.*

# Memorandum

Alaska Court System

*Done when you have time  
Cherlie*

RECEIVED  
JAN 30 1979

TO:  Arthur H. Snowden, II  
Administrative Director  
Office of Administrative Director  
Alaska Court System

DATE: January 29, 1979

FROM: Merle P. Martin *MPM*  
Manager of Technical Operations

SUBJECT: Small Claims Data

Following is the data you requested:

1. Percent District Court filings that are small claims.

<u>Location</u>	<u>1977</u>	<u>1978</u>
Anchorage	51%	57%
Fairbanks	46%	51%
Juneau	78%	83%
TOTAL	53%	59%

*#1000 - District Court*

Small claims are becoming a larger portion of District Court civil matters. However, a recent study of ours shows that, for those cases filed in Anchorage under normal civil (rather than small claims) procedure, 23 percent were less than \$1,000 and 23 percent were between \$1,000 and \$2,000. It is too early to tell what effect the increase in the small claims limit to \$2,000 will have on that 23 percent figure.

2. Filing per month.

<u>Location</u>	<u>1977</u>	<u>1978</u>	<u>% Increase</u>
Anchorage	224	325	45%
Fairbanks	42	60	43%
Juneau	46	63	37%
TOTAL	312	448	44%

*5 to 10% increase in filings*

The 1978 figures are only through the first nine months of the year. So the impact of the \$2,000 limit is not included. Yet, even without the increases in small claims filings expected from the higher limit, in filings per month increased over 40 percent from 1977 to 1978.

*Cost of rules collection  
if want of procedure*

*Education + training  
with present*

3. Days between filing and disposition.

<u>Location</u>	<u>1977</u>	<u>1978</u>	<u><sup>civil</sup> % Increase</u>
Anchorage	217	195	10%
Fairbanks	270	210	22%
Juneau	<u>134</u>	<u>103</u>	<u>23%</u>
TOTAL	213	184	24%

There has been a decrease in small claims disposition times. Small claims take 24 more days to dispose other <sup>than?</sup> civil matters in Anchorage. However, small claims are disposed of faster in Fairbanks (29 days) and Juneau (208 days).

4. Trial Rate.

<u>Location</u>	<u>1977</u>	<u>1978</u>
Anchorage	14%	6%
Fairbanks	8%	3%
Juneau	<u>8%</u>	<u>11%</u>
TOTAL	12%	8%

The trial rate has decreased in Anchorage and Fairbanks and has increased in Juneau.

5. Percent disposition for the plaintiff.

<u>Location</u>	<u>1977</u>	<u>1978</u>
Anchorage	43%	50%
Fairbanks	32%	39%
Juneau	<u>48%</u>	<u>57%</u>
TOTAL	42%	49%

The Percent of dispositions in favor of the plaintiff increased in all three locations from 1977 to 1978. Interestingly, the percent of cases filed under regular civil procedure (rather than small claims) and for which the disposition is in favor of the plaintiff are higher in Anchorage and Fairbanks than the like percentage for small claims. Yet plaintiff disposition rate is higher for small claims than for other civil cases in Juneau.

} diff in judges

cc: Leanne Culp

## SMALL CLAIMS DATA -- ADDENDUM

February 2, 1979

Small Claims disposition times for those cases going to trial are as follows:

	<u>Average</u>	<u>Median</u>
Anchorage	127	92
Fairbanks	127	120
Juneau	64	54

This is to be compared to Small Claims disposition times for those cases not going to trial as follows:

	<u>Average</u>	<u>Median</u>
Anchorage	233	105
Fairbanks	281	159
Juneau	140	39

Settlement - not notify court  
no answer, fail to default  
for some time.

Small Claims

\$ / property

firms for money not property

(late)  
delayed defaults?

Note:

4/19/79

Get a copy of filing materials provided to individual filing small claims actions; also handbook.

4/19/79

Note: also get a copy of the court system's report.

time lag  
complaints

Alternative - C.D.C. ~~etc~~

"Alaska Small Claims Handbook"