

LITIGATION, LEGISLATION, AND ETHICS

Small Claims Court Step by Step

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The following information is based on my experiences in having initiated more than 100 Small Claims Court actions. In 90 cases, the defendant did not show up or provide a defense. In the remaining cases, the defendant did not bring an attorney. In only two cases was a counterclaim made, and each was dismissed as being without merit.

Using one's state/county Small Claims Court (SCC) may help you put the money you worked so hard for where it belongs – in your pocket. However, it turns out that the mechanisms for using the SCC belong to all the people. Because of this, the tools that you are relying on to collect an unpaid balance, are the very same ones that will guide your creditors in their efforts to collect on any past due bills that you might owe them. The SCC is an incisive tool, cutting straight to the core of an issue. For those who are not fearful of confrontation or a counterclaim, but instead are guided in their actions by “the principle of the thing,” initiating an SCC action is the ideal means by which to accomplish your goal.

Before jumping into the fray, it is usually best to determine when it is not appropriate to initiate an action in SCC. Some of the more common reasons are:

- The dollar amount you are claiming to settle for the services you provided is in excess of the dollar amount allowed for by state law (ie, \$3,000 in NY, \$2,000 in NJ, and \$2,500 in Conn) and you don't want to settle for less.
- Your former patient, now the debtor, has no assets, is not employed, has no property, has no car or checking account, or has already named you as a creditor in his declaration of bankruptcy action.
- You may be vulnerable to a counterclaim having some substantive merit; in other words, you may be vulnerable to a countersuit in malpractice.
- There may be a valid defense, a justifiable reason, for the nonpayment, which, if the defendant were to document it at a hearing, would allow him to prevail. This might take the form of a claim for breach of promise or contract.
- You don't have an accurate home or work address for the debtor and you're not willing to spend \$100 for “a skip-trace” agency to locate your debtor's residence or place of employment. The minimum fee is \$25 to initiate a search whether it is successful or not.
- It doesn't bother you to lose the amount of money involved; or, it's not worth the time and/or trouble to file suit to collect it.
- Your administrative records, such as financial documents or contracts, as well as your clinical records are not sufficient to allow you to prove your claim.

- You are pleased with the past performance of your collection agency/attorney and don't mind giving them a hefty percentage of the money you worked so hard for.

Assuming none of the above apply, there often comes a time for many of us when we believe it is not only futile to continue with our in-office collection efforts but also that we are being manipulated by the financially responsible party who is not paying us. Each of us has a threshold that when crossed galvanizes us to act. For some of us this threshold is very low. For example, one practitioner may initiate a claim when the debtor refuses to return the last three telephone calls made regarding the outstanding balance for professional services rendered. Another practitioner may be incited to file a claim only after the debtor fails to respond to multiple collection letters over a period of several months. Regardless of what your particular breaking point is, it is imperative to develop good fiscal management by having in place sound office policies to delineate that point in time at which collection efforts will cease and legal action will begin.²

Okay, your threshold has been crossed, and you wish to initiate an action to collect your fee. We must first assume that the statute of limitations, the time limit within which you are legally allowed to initiate a claim based on a contract (your truth-in-lending statement), has not run out. The second assumption is that you have a legitimate claim to the money you are owed for the professional services you rendered. We will further assume that you have the correct name and address of the person who is in your debt (the financially responsible party who is often not the patient) or that of his or her spouse if they are married. The next assumption is that you have the name and address of the debtor's employer or know the bank in which he maintains assets. Finally, let's assume you have ruled out using a collections attorney who often charges 35% to 50% of any amount collected, or a collections agency that may take 15% to 30%.

Your time commitment to this process will require at a minimum, about 60 to 90 minutes of due diligence of which 5 to 10 minutes will consist of the actual presentation of your story before a judge or an administrative official acting as such. The remaining 50 to 80 minutes will be given to gathering the appropriate documentation and preparing your claim. The cost to file your claim can vary from \$10 to as much as \$50 depending on the amount you are suing for. In some states, the filing fee may differ depending on whether you are filing as an individual or as a corporate entity such as a PC, PA, etc. If you win your case, the filing fee will be incorporated in the amount you are awarded.

Your first step is to get the initial claim form from the SCC in which you are going to file your claim. A request by telephone is usually sufficient; however, depending on the rules of the court, sometimes a written request with a

stamped, self-addressed envelope may be required. Whether you are filing as an individual ("a natural person") or a corporate entity, may be a factor insofar as the type of form you must use. To complete this form you will need the following information:

1. The correct name and address (a PO box number is not acceptable) of the party you are bringing suit against.
2. The dollar amount you are claiming they owe you.
3. The date at which time the debtor began owing you that money; in other words the date at which time the account became delinquent. The judge will use that date to assess any interest that you are owed.
4. Finally, the reason you are owed the money. This reason will almost always be breach of contract by failing to pay for services rendered which can be simply stated as "fee due for professional services rendered."

Your court will inform you as to how many cases you may file at any one time for any given court session. For example, in Brooklyn, NY, it is 2 cases per session or a maximum of 5 cases per month. It is advisable to take advantage of this limit because you will almost always be required to be present in court. Yes, you will have to take time out of the office or use your day off unless your state or county court system offers an evening session.

Even though you will personally have to attend the hearing, you may send a staff member to file the claim with the SCC. You may also file by mail. When enclosing the appropriate filing fee, check with the court first as often a personal or business check is not accepted. The advantage of filing it in person is that the clerk of the court will give you the date on which your case will be heard. Should this date present a problem, you will then be able to hold off filing until another day. You will not be given a choice of dates for your hearing. On filing your claim, besides being issued a court date, you will receive a case number. Don't lose this number. A good idea is to enter this information in the patient's file. Although it varies from county to county and state to state, the average wait time from filing until hearing date, may be a month or so.

When preparing your case for your hearing, *don't depend on your memory*. A good idea is to chronologically place the salient information on 5 x 8 inch index cards. Remember the "KISS" principle; the judge or hearing officer that session will be hearing a great number of cases and a simple straightforward story will go a long way. You will be permitted to read from your cards. It is rare to require more than 5 to 10 minutes to "state your case." Have all of your supporting documentary evidence handy, organized, and ready to be presented as you are relating your facts.

The plaintiff, you, presents first after which the defendant is given the opportunity to respond. You are allowed to interrogate or cross-examine the defendant, and he or she is allowed to then question you. Be prepared and have pencil and paper with you. When the judge says: "do you have anything else to add?" if you respond "no," you will not be per-

mitted to say anything else so be sure you have spoken your peace. Remember when you enter the hearing room leave your ego and your "attitude" at the door. Be calm and even-tempered and behave respectfully to both the judge and the debtor even when he or she misstates the truth.

It is important to understand that the mission of the SCC is to provide "substantial justice." Toward that end the rules that usually govern other court proceedings are typically modified to allow the parties to fully air the facts of their case whether they are articulate speakers or not. The administrative evidence you will generally need to present should consist of the contract or truth-in-lending statement that you had with the patient, the payment ledger, and whatever documentation you have relative to your collection efforts. X-rays, models, or treatment card information will not be necessary unless the defendant debtor uses as a defense or counterclaim that the service you performed was of such a poor quality that this presented them with a valid reason for nonpayment. Without an expert witness such testimony should not even be allowed. In general, be prepared to "object" when hearsay evidence is being offered.

The following list is representative of the types of evidence you may need to support your case:

- A signed contract or document showing the agreed on fee for the services performed.
- The patient's/customer's/client's ledger card (statement of the account) showing the dates and amounts of all payments made and the remaining balance due or outstanding.
- Witnesses who are willing to come to court to give *relevant* testimony on your behalf. (Witnesses who may be unwilling to be present and testify can be compelled to do so by having a subpoena served on them. You can obtain a subpoena for a witness at no cost by requesting it from the SCC clerk. To serve a subpoena, you will need to have the witness' name and address.)
- All canceled or postdated checks, as well as any checks that were returned due to "insufficient funds."
- Any treatment or account transaction information to help you with dates.
- Any bills or receipts that were incurred, ie, lab bills.
- Other documents that are relevant to the case, eg, letters to and from the provider of the service and the debtor.
- Documents or records that may be held by the debtor, other persons, or institutions or organizations other than the debtor such as insurance company claim forms showing that the patient was paid even though you were not. Such records can also be obtained by serving a "Subpoena for Records" known as a "Subpoena Duces Tecum," which can be obtained at no cost on request from the SCC clerk. All document(s) you wish to subpoena, must be described with some specificity.

All subpoenas, whether for witness or for records, require that they be "served." The fee for a process server to do this may vary from \$35 to \$50. A staff member over 18 can deliver it as well.

Acting aggressively will sometimes yield results you didn't

count on. Some people simply can't stand having the threat of going to court hang over their heads. A week before the hearing date is a good time to propose a settlement if you can muster one up. The career debtor, of course, will not be budged.

It is rare that the debtor ever brings an attorney or a witness. The scenario most often encountered as follows. At the hearing, the debtor fails to appear. You will present the facts of your case and supporting documents before a judicial hearing officer; this will probably take less than 5 minutes. The hearing officer may ask a few questions to clarify the reason for requesting the money you believe you are owed. Most, but not all, judges are kind and patient. If you seem to have a stern and controlling one, consider it to be the luck of the draw and take it in stride.

In my experience the judge's clerk will always send the decision in the mail. The piece of paper you receive with the decision is called a "judgment," and the hearing you participated in is called an "inquest." You are now a judgment creditor and the debtor is called a judgment debtor. Winning a judgment in your favor does not guarantee that you will collect anything nor does it compel the debtor to pay you. However, because you are now a judgment creditor, it grants you the right to pursue other legal avenues.³

Small claims court actions are sometimes filled with unexpected twists and turns that run the gamut from the debtor paying immediately to filing for bankruptcy and a myriad of possibilities in between.⁴ Collecting on your judgment always begins with a request for payment of the money legally owed you as a result of the judgment obtained (the debtor has also been sent a copy of the judgment). In your contact with the debtor, preferably by letter, you should strongly note that in the event of continued nonpayment, the judgment permits you to:

1. Mar the debtor's credit rating by having the judgment made a matter of public record insofar as it will be reported to all the major credit agencies. This report will remain for 7 years even after the debt it is paid.
2. Have the debtor's salary garnished. This will require notification to their employer; something they may not wish to happen.
3. Have the debtor's property (bank account) attached by the marshal or sheriff through the use of an income and/or property execution.

To report the debt to a credit-reporting agency, you need to have the "last known" residential address of the debtor. In addition, you must register a "true" copy of the judgment in the debtor's county clerk's office, city hall, town clerk's office, or the clerk's office of the court of appropriate jurisdiction; depending on the state in which you live. This procedure can be done by mail and entails a fee (\$25 in New York).

To accomplish the second item, you will need the address of the debtor's place of employment. Again, you will need to file the appropriate documents with sheriff's or marshal's office; they will inform you of the type of form(s) you will need. The form(s) typically ask for your name and address, the debtor's employer or the location of his place of employment, and some basic information related to the judgment such as the case number, the date of the judgment, and the amount awarded, etc. You must indicate that you are acting as your own attorney by placing the Latin words "Pro Se" by your signature. Again, there is a small fee for filing these documents.

To accomplish the last item, especially as it relates to having a bank freeze the debtor's account, requires you to know the name and address of the bank in which the debtor has an account. In New York, a "Subpoena for Information and a Restraining Order" can be obtained at the SCC clerk's office. It can be served *by mail* on any bank, organization, or institution that may have information relating to the location or amount of a debtor's assets or place of employment. For purposes of garnishment, you will have to file a form, which the sheriff or marshal can provide, that specifies some basic information of the type noted here. As usual there is a small fee for this service.

Obviously this topic cannot be comprehensively covered in the short space provided in this column. The point to take home is that SCC should not be excluded as a viable method to collect the fee you worked so hard for. In many cases, the amount may be worth the trouble and inconvenience. Moreover, if the case is a "clean one" (you've done everything right and your records support you), you need not fear the proverbial countersuit. Finally, you will feel good about yourself in that you stood up for what is right and you refused to be taken advantage of.

There is one other thing to learn from this experience. Like many areas of medicine, one's financial health and well being is best served by practicing prevention. If you don't allow debts to develop, you never have to deal with their consequences. This crosses over the line from risk management into the arena of practice management and is best covered by another type of practitioner.

References

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2. Barron's Legal-case series: small claims court step by step (with forms for New York, New Jersey and Connecticut). p. 12.
3. Lebovits G, Engoron A. How to help judgment creditors collect...., New York Law Journal, 1998;219:1 (Tues, Jan 27, 1998) The article can be seen in its entirety at: <http://www.drtd.com/index.html/article7.htm#1barticlenylj>
4. Barron's legal-case series: small claims court step by step, p. 25 <http://www.drtd.com/index.html/scenario.htm>