

FREE LEGAL SEMINAR

ON

**Small Claims 101:
How to Present Your Case
or Defend It
July 2010**

A Washoe County Law Library Community Service Program

Speaker: Hon. Kevin G. Higgins

Date: Thursday, July 29, 2010

**Location: Washoe County Law Library
75 Court St.- Old Courthouse**

Time: 5:00 – 7:00 PM

*Due to limited space please sign up ahead of time by
contacting the Washoe County Law Library at*

328-3250



Small Claims 101:

How to Present Your Case or Defend It!

Kevin Higgins
Justice of the Peace
Sparks Justice Court

July 29, 2010

Definition

- As recognized by the Justice Court Rules of Civil Procedure (JCRCPP), small claims trials are intended to be “informal, with the sole object of dispensing fair and speedy justice between the parties.”
- No court rule authorizes a jury trial in a small claims action.
- There are also no formal pleadings or discovery mechanisms.
- Simplified rules and procedures.

Jurisdiction

A. NRS 73.010 – Small Claims

- In all cases arising in the justice's court for the recovery of money only, where the amount claimed does not exceed \$5,000 and the defendant named:
 - Is a resident of;
 - Does business in; or
 - Is employed in,the township in which the action is to be maintained, the justice of the peace may proceed as provided in this chapter and by the rules of court.

Jurisdiction

Justice Court Rules for Civil Procedure

B. Rule 88. Action for Small Claims

- In all cases for the recovery of money only, where the amount claimed does not exceed the statutory limit set for a small claim action, the action shall be deemed commenced when any person appears before any justice of the peace and executes an affidavit substantially in the form set forth in Rule 89, and the justice court shall proceed as provided in these rules.
- Counterclaims and cross-claims are governed by Rule 13.
- Debts owing and due to one creditor or claimant from the same person may not be severed in order to bring such claims within the jurisdiction of a small claims court. Such claims must be combined and any amount in excess of the jurisdictional limit must be waived by the plaintiff in order for such claim to be adjudicated in the small claims court. Notwithstanding the above, the court may, in its discretion, order that claims which are legally or factually dissimilar be tried separately.

Jurisdiction

C. Agreement to Arbitrate

- NRS 38.221 Motion to compel or stay arbitration.
- NRS 38.250 Nonbinding arbitration of certain civil actions filed in district court required; nonbinding arbitration of certain civil actions filed in justice's court authorized; effect of certain agreements by parties to use other alternative methods of resolving disputes.
 - 1(b) A civil action for damages filed in justice's court may be submitted to arbitration or to an alternative method of resolving disputes, including, without limitation, a settlement conference, mediation, or a binding short trial, if the parties agree to the submission.

Small Claims Procedures

A. Complaint

- **Rule 89. Form of Affidavit**
 - Affidavit of Complaint and Order
- **Rule 17. Parties Plaintiff and Defendant; Capacity**
 - Real Party in Interest
 - Capacity to Sue or Be Sued
 - Infants or Incompetent Persons
- **Rule 18. Joinder of Claims**
 - Claims
 - Counterclaims
 - Cross-claims
 - Third-party claims

Small Claims Procedures

C. Indigent Litigants

- NRS 12.015 Actions involving indigent persons.
 - 2. If the court is satisfied that a person who files an affidavit pursuant to subsection 1 is unable to pay the costs of prosecuting or defending the action or if the court finds that a person is a client of a program for legal aid, the court shall order: (1) To allow the person to commence or defend the action without costs; and (2) To file or issue any necessary writ, process, pleading, or paper without charge.
 - S.B. 177

Small Claims Procedures

D. Statute of Limitations

- Actions Other Than for the Recovery of Real Property\
- NRS 11.190
 - **Within 6 years:**
 - An action upon a judgment or decree of any court of the U.S.
 - An action upon a contract, obligation, or liability founded upon an instrument in writing.
 - **Within 4 years:**
 - An action on an open account for goods, wares, and merchandise sold and delivered.
 - An action for any article charged on an account in a store.
 - An action upon a contract, obligation, or liability not founded upon an instrument in writing.

Small Claims Procedures

□ Within 3 years:

- An action upon a liability created by statute, other than a penalty or forfeiture.
- An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.
- An action for taking, detaining, or injuring personal property . . . But in all cases where the subject of the action is a domestic animal usually included in the term “livestock”
- An action on the ground of fraud or mistake.
- An action for damages sustained by a financial institution because of its reliance on certain fraudulent conduct of a borrower.

Small Claims Procedures

□ Within 2 years:

- An action against a sheriff, coroner, or constable upon liability incurred by acting in his official capacity and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.
- An action for libel, slander, assault, battery, false imprisonment, or seduction.
- An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.
- An action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another.

Small Claims Procedures

□ Within 1 year:

- An action against an officer, or officer de facto, to recover goods, wares, merchandise, or other property seized by the officer in his official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise, or other personal property so seized, or for damages for the seizure, detention, or sale of, or injury to, goods, wares, merchandise, or other personal property seized, or for damages done to any person or property in making the seize.
- An action against an officer, or officer de facto, for money paid to the officer under protest, or seized by the officer in his official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

Place of Trial

■ **NRS 13.010 Where actions are to be commenced.**

- When a person has contracted to perform an obligation at a particular place and resides in another county, the action must be tried in the county in which such obligation is to be performed or in which the person resides; and the county in which the obligation is incurred shall be deemed to be the county in which it is to be performed.
- Actions for the recovery of real property, injuries to real property, for the partition of real property, and for the foreclosure of all liens and mortgages on real property shall be tried in the county in which the subject of the action, or some part thereof, is situated.

■ **NRS 73.010 Jurisdiction of justice courts for small claims.**

- In all cases arising in the justice court for the recovery of money only, where the amount claimed does not exceed \$5000 and the defendant named:
 - Is a resident of;
 - Does business in; or
 - Is employed in,the township in which the action is to be maintained.

Trial

- Exhibits
- Burden of proof
 - Preponderance of the evidence
- Liability
- Damages
- Cross-examination
 - No Judge Judy

Judgment

■ JCRCP 97

- If the judgment or order be against the defendant, the person shall pay the same forthwith or at such times and upon such terms and conditions as the justice shall prescribe.
 - Payments

APPEALS

■ JCRCPC 98 Time limit for filing

- A plaintiff or defendant may appeal from the judgment against him or her to the district court as in other cases arising in the justice courts, pursuant to Rule 72 *et seq.*, except that the filing of a notice of appeal must be done within 5 days from the entry of the judgment, rather than the 20-day period provided for in Rule 72B. No formal Notice of Entry of Judgment is required. The form of appeal and appeal bond shall be pursuant to Rules 99 and 100.

Appeals

- **JCRCP 99 Form of appeal**

- Notice of Appeal to District Court

- **Appeal Bonds**

- JCRCP 100

- The notice of appeal mentioned in Rule 99 shall be accompanied by an appeal bond. The appeal bond may be in the form of a cash bond, a formal surety bond, or an informal surety bond substantially in the form set out in this rule. After an appeal bond is filed, the other party may raise, for determination by the justice, objections to the form of the bond or to sufficiency of the surety. The filing of a bond on appeal stays execution on the judgment until the appeal is determined.



SHOULD YOU SUE?

- Does the defendant have any assets?
- Is the judgment collectible?