

RISK MANAGEMENT ARTICLE

Surviving small claims court

At some time in their careers, dentists may receive a summons to appear in small claims court because of a charge of malpractice or a payment dispute. A summons and possible court appearance will likely engender significant stress, but that stress can be managed by understanding the nature of small claims courts and what steps dentists can take to protect themselves during the process.

Small claims courts

Small claims courts are designed to settle disputes quickly and inexpensively by providing more streamlined procedures and a more relaxed process compared with standard courts. As the name suggests, the amount of money the plaintiff can request is capped, usually at around \$10,000, although this varies by state. The judge typically only decides whether the defendant must pay the money. For instance, the judge would not place restrictions on the dentist's practice or order the dentist to provide free care to the defendant.

States differ on how small claims are handled, so dentists need to understand the process in the states where they practice. For example, in general, the defendant and plaintiff represent themselves, but some states permit attorneys to be involved. Usually, a winning defendant cannot collect attorney fees from the plaintiff.

Judges are not experts in dentistry, so they may look to expert testimony to guide them in their decisions.

Response to a summons

Dentists will need to sign to acknowledge receipt of the summons, which will include the name of the plaintiff, a case number, and a brief description of what the case concerns.

The first step dentists should take after signing for the summons is to contact their professional liability insurance company and complete an incident form. A claims adjuster can then advise the dentist as to whether the policy applies in the given situation. If it does, the adjuster can help the dentist decide whether to negotiate with the plaintiff or go to court. If the dentist decides to go to court, the adjuster may be able to help with preparing the defense by, for example, identifying and facilitating expert witness testimony. Dentists should also contact their attorney for consultation. Both the claims adjuster and the attorney will want a copy of the summons.

Dentists should never ignore a summons even if they feel the case is without merit. Not appearing in court could result in the judge deciding in favor of the plaintiff. Dentists may be able to file a request to postpone a hearing, but it is best to first check with the small claims court to see if the reason is of sufficient merit. If the summons was not delivered within the time frame required by the state, the dentist can include that in the explanation as to why a postponement is being sought.

Small claims court process

The process of a small claims court varies by state, but here is a general overview:

- **Plaintiff files complaint** and receives court date.
- **Plaintiff has defendant served** (summoned) by a third party some business days (the number of days depends on the state) before the scheduled court date.
- **Hearing occurs.** If the defendant does not attend the hearing, the plaintiff usually wins by default. If the plaintiff does not attend the hearing, the case usually is dismissed. If both the defendant and plaintiff are present, the judge hears the case.
- **Decision is delivered.** The judge will decide for the defendant or the plaintiff. If the decision is in favor of the plaintiff, the defendant will need to pay the amount specified. In some cases, the judge may decide that each party owes the other and that the claims offset each other.
- If either party disagrees with the action taken, they can file an appeal or for a motion to set aside the default or dismissal. Typically motions and appeals must be filed within a set time frame.

However, dentists should keep in mind that even if the summons was slightly late, it is usually better to appear in court, if possible, rather than ask for a postponement.

In addition, dentists should not alter any patient records after receiving the summons, even if they notice errors in documentation, because they may be asked by the judge if any changes have been made.

Finally, dentists should refrain from discussing the dispute with anyone except the claims adjuster and attorney.

Resolving a dispute before court

Dentists may want to be open to resolving the dispute with the plaintiff before, and even on, the hearing date, thereby avoiding the uncertainties of how the evidence will be perceived by the judge. Some courts offer a mediation service, which can be helpful in reaching an agreement, but dentists should be guided by their attorneys as to whether to pursue this route.

Any agreements should be put in writing. The plaintiff can then request the case be dismissed without prejudice (so that no judgment appears on the defendant's credit report).

Before the court date. Before the date of the hearing, dentists should prepare with the same care they take when preparing to perform a new or complicated procedure.

Learn courtroom procedures. Review the information about small claims courts on the state's website. If possible, attend another hearing to view the process in action. Ideally, the dentist should choose a hearing presided over by the same judge who will hear the dentist's case.

Consider the plaintiff's viewpoint. Dentists should consider possible arguments the plaintiff might make in court, so they can better prepare their own case.

Choose and prepare any expert witness. When clinical care is in dispute, the defendant's case may be strengthened by the testimony of another dentist with relevant expertise. Expert witnesses should not be partners in the dentist's practice or close friends. Experts should have all the information needed to offer an opinion. Dentists should discuss with the expert what he or she plans to ask and request that the expert dress professionally for the court appearance.

Witnesses who cannot appear at the hearing can usually submit a written statement, which may need to be signed before a notary public. Some courts allow phone testimony by witnesses, but an in-court appearance is the best option.

In the courtroom

Demeanor and attitude are important in a courtroom. Dentists can make an effective presentation by doing the following:

- *Dress appropriately.* Be conservative in choices of clothing and accessories.
- *Arrive early.* Parking may be a problem, and most courtroom entrances now have security stations.
- *Be respectful.* Phones should be turned off or placed on vibrate only, if there is concern about emergency calls. Do not chew gum or listen to music while waiting for the case to be called. Stand when the judge enters or leaves the courtroom and address him or her as "judge" or "your honor."
- *Stay calm.* It can be frustrating to hear negative comments from the plaintiff that you believe to be untrue. Getting angry, however, will only harm you. Instead, take notes about what you want to say in response.
- *Speak clearly.* Address remarks to the judge, not to the plaintiff, and be unemotional. State the facts of the case and include how you would like the judge to rule and why.
- *Answer the judge's questions thoughtfully and truthfully.* If you don't understand a judge's question, ask to have it explained or asked in a different way.
- *Decide how to proceed after the decision has been made.* If you disagree with the decision you can file a motion or appeal.
- *Consider lessons learned.* The experience may provide you with ideas for revising office procedures. For example, an experience in small claims court with a patient who was unhappy with a bill may prompt you to revise the procedure for reviewing estimates with patients.

Organize the evidence. Hearings can be as short as 15 minutes, so organization is key. Dentists should prepare an outline of what they wish to say but avoid reading a prepared statement. Bring the original and multiple copies (at least three) of any relevant materials, such as consent forms the patient signed. Only give copies to the court; keep the original.

Practice. Dentists should practice what they plan to say in court, ideally, in front of someone who can identify potentially weak areas in the presentation.

In court

The order of cases is typically listed on the court's calendar, but dentists should know that cases can take less time than expected, which can affect the timing of their own cases. The court will call the roll to verify that the plaintiff and defendant are present.

Usually, the judge has the plaintiff present first. Dentists should not interrupt during the plaintiff's presentation. The judge will then ask the defendant to present. It is important to be succinct because time is limited.

During the hearing, the judge will likely ask both parties questions. If the judge asks for copies of materials related to the case, the dentist should hand them to the court staff, not directly to the judge.

At the end of the hearing, the judge will either issue a decision or may take the case "on advisement" or "under submission," meaning that the judge wants to consider the case longer or check aspects of the law. In that case, the decision is usually sent by mail.

Small claims judgments are normally in the public record. However, a judge may choose to issue a decision that becomes effective only if the defendant fails to pay the stated amount of money. In this case, the judge schedules a follow-up hearing to ensure payment was complete; if so, the judge dismisses the case with prejudice, which means the claim cannot be refiled. An advantage of this process is that the judgment does not appear on the defendant's credit record.

Preparation and calmness

Dentists can mitigate the distress of being served a summons by taking immediate action steps, including notifying their professional liability insurer, preparing for the hearing, and remaining calm in the courtroom. These actions provide the optimal opportunity for successful defense against a claim.

Note: This article is not intended to provide legal advice. For legal advice, consult with an attorney.

Article reviewed by: Dr. Kenneth W.M. Judy, DDS, FACD, FICD, PhD

Article by: Cynthia Saver, MS, RN, President, CLS Development, Columbia, Maryland

RESOURCES

Civil Law Self-Help Center. Going to court. www.civillawselfhelpcenter.org/self-help/getting-started/representing-yourself-in-court/66-going-to-court.

Civil Law Self-Help Center. Small claims. www.civillawselfhelpcenter.org/self-help/small-claims.

State of California Department of Consumer Affairs. The small claims court: a guide to its practical use. www.dca.ca.gov/publications/small_claims.

© Dentist's Advantage, 2023 © The National Society of Dental Practitioners, 2023

Risk Management services are provided by Dentist's Advantage and the NSDP to assist the insured in fulfilling his or her responsibilities for the control of potential loss-producing situations involving their dental operations. The information contained in this document is not intended as legal advice. Laws are under constant review by courts and the states and are different in each jurisdiction. For legal advice relating to any subject addressed in this document, dentists are advised to seek the services of a local personal attorney. The information is provided "AS IS" without warranty of any kind and Dentist's Advantage and NSDP expressly disclaims all warranties and conditions with regard to any information contained, including all implied warranties of merchantability and fitness for a particular purpose. Dentist's Advantage and NSDP assume no liability of any kind for information and data contained or for any legal course of action you may take or diagnosis or treatment made in reliance thereon.