

Background: In this case (4-04-SC-006736), the Commissioner ruled that Plaintiff could not pursue this case because Plaintiff had filed more than two cases in excess of \$2,500 in the past 12 months.

Argument: The Commissioner applied the incorrect law to the situation, denying Plaintiff the right to pursue this case. The relevant law for this situation is the C.C.P.:

”116.231. (a) Except as provided in subdivision (d), no person may file more than two small claims actions in which the amount demanded exceeds two thousand five hundred dollars (\$2,500), anywhere in the state *in any calendar year*.

(b) Except as provided in subdivision (d), if the amount demanded in any small claims action exceeds two thousand five hundred dollars (\$2,500), the party making the demand shall file a declaration under penalty of perjury attesting to the fact that not more than two small claims actions in which the amount of the demand exceeded two thousand five hundred dollars (\$2,500) have been filed by that party in this state *within the calendar year*.”

Thus, we see that the relevant test is that, “*no person may file more than two small claims actions in which the amount demanded exceeds two thousand five hundred dollars (\$2,500), anywhere in the state in any calendar year*.”

In fact, **this was the first case to exceed \$2,500 filed by Plaintiff in this calendar year** and, therefore, was clearly a correct filing that should not have been dismissed by the Commissioner. The Commissioner’s ruling clearly had an incorrect or erroneous legal basis, and this case should, therefore, be reinstated.