

A GUIDE TO SMALL CLAIMS COURT

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Distributed by

Fulton County Circuit Clerk

1. What is Small Claims Case?

A small claims case is a simplified civil proceeding in which you may sue for an amount not exceeding Ten Thousand Dollars. Small claims courts are designed to allow you to pursue or defend a claim without as much legal process and expense as might be required for a larger claim.

A small claims lawsuit is limited to the collection of a debt or for damages. Typical examples of debt collection are for unpaid bills, unpaid wages, or money loaned.

Typical examples of a claim for damages include damages to a house or motor vehicle, as well as a claim for personal injury. The total of any claim in Small Claims Court may not exceed a total of \$10,000 plus court costs.

2. Who May Use the Small Claims Court?

Any person can file a small claims complaint (with or without an attorney) so long as the amount claimed is not more than \$10,000. But no corporation may file a complaint or counterclaim in small claims unless represented by an attorney. However, a corporation which is a defendant in a small claims case may appear and defend a small claims case through any officer, director, manager, or supervisor of the corporation without the requirement of an attorney.

3. Do You Need an Attorney to File A Small Claims Complaint?

No. However if you can afford an attorney, it would be wise to retain one. You will be held to the same legal standards as an attorney both in the filing of your case and in presenting evidence and argument to the court.

The courthouse clerks, bailiffs, sheriff's deputies, and the judges are prohibited from giving you any legal advice or assistance as to the proper way to proceed in any legal case. Judges have no obligation to ask questions or to make objections on behalf of any party. A judge may not take sides in any proceeding. Judges must rule on all motions and on the case itself without regard to whether or not a party has an attorney.

If you decide to proceed without an attorney, the following educational resource includes small claims information and is free of charge at www.IllinoisLegalAid.org.

4. In Which County Must You File Your Small Claims Case?

Normally a small claims lawsuit can only be filed (1) in the county where the defendant resides or (2) in the county where the events described in the lawsuit occurred.

5. Preparing Your Small Claims Complaint.

Go to the Circuit Clerk's Office at the courthouse in the proper county and explain to the clerk that you wish to file a Small Claims Complaint. The Circuit Clerk's Office normally has

The person filing the complaint is called the "plaintiff" and the person being sued is called the "defendant".

You need to know the following information in order to properly fill out your small claims complaint form:

A. The **plaintiff's correct name, address, and phone number** (if he or she has a phone). It is important that you have the correct legal name of each party, including the correct business name of any business being sued.

B. In order to serve (deliver) legal papers to the defendant, you must supply the correct **name, address, or place of employment of the defendant**, and phone number (if he or she has a phone). If the defendant cannot be served with the proper legal papers, then you normally cannot obtain a judgment against the defendant.

C. In order to complete the small claims complaint form, you must be able to **write down the nature of your claim, including dates, amounts, and other information necessary to establish your claim.**

D. **If your claim is based upon a written document**, such as a contract or lease, then you are required to attach a copy of that document to your complaint, unless that document is unavailable to you. In addition, copies of that document should be attached to the copy of your complaint which will be served on the defendant. It is your responsibility to do this.

6. Court Costs and Fees –Small-Claims Division.

1. New case with claim not exceeding \$250.

Filing fee	\$116.00
Answer or appearance	\$113.00

2. New case with claim from \$251 to \$500

Filing fee	\$119.00
Answer or appearance	\$113.00

3. New case with claim from \$500.01 to \$10,000

Filing fee	\$138.00
Answer or appearance	\$119.00

7. Filing Your Small Claim Complaint at the Courthouse

After completing your small claims complaint form, you then file it with the Circuit Clerk. However, you must pay the proper filing fees before the Clerk will accept and file your small claims complaint.

8. Scheduling Your Court Date.

The Circuit Clerk's Office will assist you in with direction for scheduling your first court date. You should set your first court date not less than 14 days nor more than 40 days after filing your complaint.

9. Serving Your Summons on the Defendant.

After obtaining your court date, the Clerk will give you a form called a "summons". You must fill out this form, including writing in the date of your first court appearance date. The clerk will assist you in attaching the summons to a copy of your small claims complaint. Both the summons and a copy of your small claims complaint must be served on the defendant. **It is your responsibility to have the summons served on the defendant by the sheriff or by Certified Mail.**

10. Service of Summons by Certified Mail.

You may request service be attempted by Certified-Restricted Mail with Return Receipt requested (within this state only). **However, if the defendant refuses to accept the Certified-Restricted Mail, you will then be required to serve the defendant with service of summons by the sheriff.**

11. Service of Summons by the Sheriff.

The clerk will give you direction on delivering your summons (and copies of your small claims complaint) to the sheriff for service.

If the sheriff is unable to find and serve the defendant with the summons, then it is your responsibility to obtain an alias (*second*) summons and have the sheriff attempt to serve the alias (*second*) summons on the defendant. There is a fee for an alias (*second*) summons. **Normally, the alias summons will require a new first appearance court date.**

12. Return of Summons by the Sheriff.

No judge can proceed with your case without proof that the summons was properly served on the defendant. The sheriff will send to you a bill showing whether or not the defendant was served with the summons. **You must pay the sheriff's bill.** The sheriff's office will then give you written proof that either the defendant was or was not properly served. You must file the sheriff's proof of service with the Circuit Clerk **before your scheduled court date.**

13. If You Are Sued in Small Claims, What Should You Do?

If you are being sued, normally the sheriff or other process server will serve you with a summons and a small claims complaint. The small claims complaint informs you of why you are being sued and the amount claimed. The summons informs you of the date, time, and place where you should appear for court. If you fail to appear at that place, date, and time, you may lose the lawsuit simply because you failed to appear as directed. Upon your failure to appear, the court would award a judgment to the plaintiff for the amount claimed plus court costs.

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If you disagree with any part of the plaintiff's claim, you must appear in court. You must appear in person, at the place, date, and time contained in the summons. If you appear and contest any part of the claim, the judge will set a trial date as necessary.

On the other hand, if you believe that you owe the amount claimed by the plaintiff and if you are able to pay the plaintiff in full before the court date, then you may be able to avoid a judgment being entered against you, by paying the plaintiff in full either before the court date or at the court hearing.

14. Continuances.

Continuances in small claims cases are discouraged and will generally not be granted except in the very rare case of emergency or extreme hardship. Continuances must be by written motion or the written agreement of all parties and approved by the court.

15. First Court Date (Contained in the Summons).

The plaintiff must always appear on the date and time contained in the summons regardless of whether or not the defendant has been served with summons. **Plaintiff's failure to appear may result in the case being dismissed for lack of prosecution.**

At the first appearance court date, several different possibilities may occur:

1. If the plaintiff is not present and has made no prior arrangements for a continuance, then the case will be dismissed, whether or not the defendant is present. "Prior arrangements" may NOT be made by calling the court clerk or the Circuit Clerk, but, "prior arrangements" must be based upon a written motion and order for a continuance or the written agreement of all parties and approved by the court.

2. If the plaintiff is present but the defendant has not been served with summons, then the court will enter an order allowing additional time for the plaintiff to serve an alias (*second*) summons on the defendant.

3. If the plaintiff is present but the defendant is not present after having been served with summons, then a default judgment will be entered in favor of the plaintiff for the amount claimed and court costs.

4. If the defendant appears after being served but the plaintiff fails to appear, (and there has been no continuance), then the court will normally enter a default judgment against the plaintiff by dismissing the plaintiff's complaint.

Note: The court may vacate any default judgment within 30 days of the date of the

- a. If the claim is not denied or disputed, a judgment for the plaintiff will be entered for the amount claimed plus court costs.
- b. If the claim is denied or disputed, the court will normally set the case for a trial on a specified date.
- c. At either the first appearance date or on the trial date, the court may hear the case in an informal hearing pursuant to Supreme Court Rules.

16. Trial.

At the small claims trial, the plaintiff presents witnesses and evidence first, then the defendant. All witnesses are questioned under oath. After one party has questioned a witness, the other party has the opportunity to question (cross-examine) that witness.

After all witnesses have testified, each party may make a brief persuasive argument, if the judge permits. In that persuasive argument, each party may argue how he or she believes court should decide the case. The court will then make its decision based on the law and the evidence presented court.

17. Court Costs Upon Entry of a Judgment.

Normally, but not always, the court will order the losing party to reimburse the winning party for his or her actual court costs and fees. This includes the costs of filing suit, sheriff's fees, and any other necessary fees.

COURT COSTS DO NOT INCLUDE travel expenses to and from the courthouse, lost wages or income in pursuing or defending the claim, telephone calls, or others monies spent in trying to collect or defend the claim, except court costs and fees for serving the summons or other legal documents.

18. Judgment.

Once a court decides the case, it will enter a judgment for the plaintiff or for the defendant in whatever amount is found to be due, and court costs as appropriate.

Many persons have the mistaken belief that by winning a judgment, money will automatically be paid after judgment is entered. The fact that you receive a judgment does not guarantee that the judgment will ever be paid.

A judgment for money is merely a legal document which recognizes that a debt actually exists. In addition, a judgment gives the plaintiff the legal right to attempt to collect that judgment in accordance with Illinois law governing collections of judgments.

The plaintiff, and not the court system, must take whatever steps necessary to collect a judgment if the defendant refuses to pay. You may consider obtaining or consulting an attorney to assist with legal collection procedures.

19. Dismissals and Releases.

If a claim is paid, including all costs while the case is still pending, the plaintiff should prepare and file a motion to dismiss the case because of full payment.

When a judgment has been fully paid, the plaintiff should execute a Release of Judgment and file it with the clerk. Forms are available in the Circuit Clerk's Office.

20. Miscellaneous Suggestions.

1. The Circuit Clerk's Office will assign a number to each case. Write down that number and refer to it in all dealings with the clerk and the sheriff's office.

2. If you should change your address after you file your case or after you enter your appearance as a defendant, please be certain **to notify in writing** both the Circuit Clerk and the opposing party of your new address. Failure to do so may result in you not receiving important notices regarding your case, including hearing dates.

3. All small claims court sessions are open to the public. You may attend any of these courtroom proceedings to familiarize yourself with the procedures.

The materials contained herein are believed to be accurate as of December 31, 2013, and are subject to legislative and administrative changes thereafter.