

Sangamon County Circuit Clerk's Office



Small Claims Court Manual

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The purpose of this guide is to explain, in simple language, the workings of the Small Claims Court in Sangamon County. Because procedures differ from county to county, much of this information does not apply elsewhere. All persons involved in small claims proceedings should read this booklet from cover to cover. While certain sections may be directed primarily to the person(s) filing the case (the plaintiff(s)) or to the person(s) being sued (the defendant(s)), most of the information is important to both.

What is the Small Claims Court?

The Small Claims Court is part of the Sangamon County Circuit Court. It is specifically designed to hear court cases involving claims of \$10,000.00 or less.

The Rules of Law and Evidence apply to small claims trials. Filing and pre-trial procedures are simple compared to other lawsuits. Individuals are not required to have an attorney in small claims court, however; it is recommended.

IMPORTANT: *The Small Claims Court can order a judgment only for money. It cannot require a person or business to perform a service or to stop a certain action or to return property.*

How do I file a Small Claims Complaint?

In order to begin a Small Claims action, a complaint must be filed with the Circuit Clerk's Office, Civil Division. A complaint is a document explaining who is suing who, where each person lives, how much money each person allegedly owes, and why the money is owed. The person filing the complaint is called the plaintiff. The defendant is the person being sued.

Any person 18 years of age or older may file a small claims case. Persons under the age of 18 years must have a parent or guardian file the claim for them.

Persons and businesses must sue and be sued in their legal name. Before filing your case, check the phone book for the correct spelling, address and phone number of the defendant. If you sue an incorporated business, you must use its legal name, which may be different from the name you know it by. You can determine if a business is a corporation and obtain its legal name by consulting the *Certified List of Domestic and Foreign Corporations*, available at the Illinois Secretary of State's Incorporation Division. You should note the name and address of the registered agent, who is one of the persons upon whom a summons can be served.

If you intend to sue the owner of an unincorporated business which operates under an assumed name (advertising name), you can find out the name of the owner (whom you must name as the defendant) by consulting the Assumed Name Index in the office of the Sangamon County Clerk. This office is located on the first floor of the Sangamon County Complex, Room 101.

Remember, a judgment against a defendant who is incorrectly named will be worthless.

In which county do I file my claim?

Generally, you must file your small claims in the county where:

1. The Defendant resides; or
2. The events happened which you believe give you the right to sue.

A corporation is considered to reside in any county where it does business or has an office. Filing the claim in the wrong county will not cause the case to be “thrown out,” but may result in unnecessary court costs, delay and a transfer of the case to the correct county.

The small claims division of the Sangamon County Circuit Clerk’s Office is located in Room 001 in the basement of the Sangamon County Complex, Springfield, Illinois.

Do I need an attorney to file a claim?

A person may file a claim without being represented by an attorney. While anyone filing a claim in the Small Claims Court has the right to be represented by an attorney of their choice, representation by an attorney is not required.

The Illinois Supreme Court Rules provide that a corporation may not appear as a plaintiff without an attorney but may appear as a defendant through an officer, director, manager, or supervisor if the amount claimed does not exceed \$1,500.00. The corporate officer should consult with their attorneys regarding interpretation of this rule.

If a plaintiff files a claim without the assistance of an attorney, he is considered pro se. When one chooses to act pro se, he must do all the investigations and preparation normally done by an attorney. This includes representing one self, securing any witnesses, collecting documents and evidence, and any other necessary preparation.

The law prohibits any court personnel from giving legal advice or counseling to any litigant. This prohibition includes judges as well as those working in the Circuit Clerk's office.

How do I start a small claims case?

Step one: you must fill out an original and three copies of the standard forms, small claims complaint and small claims summons. These forms are available from the Civil Division or our website www.sangamoncountycircuitclerk.org. Once the forms are completed, you will file them with the Civil Division of the Circuit Clerk's office and pay the standard filing fees.

Step two: you must arrange to notify the defendant of the case. This must be done in one of two ways.

The first method is to place the summons (one original, two copies, each having attached a copy of the complaint) with the sheriff for hand delivery to the defendant. If the defendant is to be served in Sangamon County, deliver the summons to the civil process division of the Sangamon County Sheriff's Office. If the defendant is to be served somewhere outside Sangamon County, you must arrange to deliver the summons to the sheriff or private process server in the appropriate county.

Second, if the defendant has a mailing address in Sangamon County, you may choose to give notice by serving the summons by certified mail, return receipt requested. You should fill out and sign a certified summons. The fee for certified mailing is \$9.50 per individual to be served.

The second method is less expensive than the first. However, if the postal carrier is unable to obtain the necessary signature on the postal receipt (green card), you will have to ask the clerk to issue a second (alias) summons. The cost for an alias summons is \$4.00.

What information is put in the small claims complaint?

The complaint must contain the name, address and phone number (if known) of both the plaintiff and the defendant, along with a short simple statement of the following:

1. The amount claimed.
2. The type of claim, including dates and facts in brief.

3. If the complaint is based upon a written document (i.e., a lease contract or promissory note), a copy of that document **MUST BE** attached to all copies of the complaint. If you cannot find the document, you must attach an affidavit to your complaint stating that it is not available. An affidavit is a written statement signed under oath in front of a notary public.

What is a summons?

A summons is a pre-printed, legal document supplied by the Circuit Clerk's Office, Civil Division small claims clerk or you can download and print the PDF document from our website www.sangamoncountycircuitclerk.org. The summons notifies the defendant that he/she is being sued, and the date for the first appearance hearing. The court has no power to hear a case until the defendant is served the summons. When the defendant receives the summons, he/she also receives a copy of the complaint telling him/her the reason for the suit and the amount claimed.

First appearances for pro se cases are heard on Fridays at 9:00am. First appearances are held no less than fourteen (14) or more than forty (40) days after the issuance of the summons. Before selecting a hearing date, the plaintiff must consult the Civil Division small claims clerk to avoid court holidays and dates which are already filled with other cases.

How will I know whether the summons has been served on the defendant?

Telephone the private process server of the Sangamon County Sheriff's Office on the hearing date or you receive the certified return receipt from the Post Office.

What happens at the first appearance hearing?

If the defendant has not filed a written appearance or answer, he/she must appear before the judge. If a defendant does not appear on the hearing date, the file will be brought before the judge who, upon request, can enter a default judgment in favor of the plaintiff and against the defendant. If the defendant appears and denies the claim, the judge will set a trial date. At the hearing, each party will be required to present evidence (i.e. witnesses, receipts, photos, documents, actual items in support of the claim). Be prepared to explain your side of the case.

What are the Court Costs?

The plaintiff and defendant must each pay the fees or costs listed below in order to proceed with small claims actions.

Plaintiff Must Pay

- A) Claims of \$250.00 or less pay \$43.00
- B) Claims of \$250.01 to \$500.00 pay \$53.00
- C) Claims of \$500.01 to \$2,500.00 pay \$63.00
- D) Claims of \$2500.01 to \$10,000.00 pay \$108.00

Service Fee (to notify defendant of case)

- A) Certified mailing of summons (if used)

All Claims: \$9.50 per Defendant

Defendant Must Pay

Appearance and Answer fees:

- A) Claims of \$1,500.00 or less pay \$63.00
- B) Claims of \$1,500.01 to \$10,000.00 pay \$83.00

Counterclaim/Third-Party Complaint fees:

- A) Claims of \$250.00 or less pay \$43.00
- B) Claims of \$250.01 to \$500.00 pay \$53.00
- C) Claims of \$500.01 to \$2,500.00 pay \$63.00
- D) Claims of \$2500.01 to \$10,000.00 pay \$108.00

Motion fees:

- A) Claims of \$1,500.00 or less pay \$63.00

B) Claims of \$1,500.01 to \$10,000.00 pay \$83.00

Jury Demands:

A) Small Claims Six People pay \$12.95

B) Small Claims Twelve People pay \$25.00

Additional fees are sometimes required to be paid after the case is filed, i.e., subpoena or jury fees.

What can I do if I cannot afford the filing fees?

If you are unable to afford the filing fee, you may ask a judge to allow you to file your complaint without paying the filing fee. You begin by filling out an application to sue as a poor person or defend as an indigent person. According to Supreme Court Rule 298, an application for leave to sue or defend as a poor person shall be in writing and supported by the affidavit of some other person having knowledge of the facts stating:

The applicant's occupation or means of subsistence;

The applicant's income for the year preceding the application;

The source and amount of any income expected by the applicant;

The nature and value of any property, real or personal, owned by the applicant;

The particulars of all applications for leave to sue or defend as a poor person made;

That the applicant is unable to pay the costs of the suit; and

That the applicant has a meritorious claim or defense.

The rule goes on to say that if the applicant is denied, the court shall endorse the fact of denial on the application. If the application is granted, the court shall enter an order allowing the applicant to sue or defend as a poor person.

You can obtain this form from the Civil Division, small claims clerk in the Circuit Clerk's Office or at our website www.sangamoncountycircuitclerk.org. After you have completed the form, a clerk will send it to the Judge. If the Judge waives the filing fee, that will also waive the sheriff's fee for serving process.

If you are sued and contest the claim, you may likewise ask a judge to waive the fee for filing an appearance if you are unable to afford the filing fee.

May I recover court costs from the person I sue?

Normally, the court will order the party losing the lawsuit to reimburse the winning party for their court costs. This includes the cost of filing suit, service fees and subpoena fees. The judge may, at his discretion, assign costs to the winning party.

“Court Costs” **DO NOT** include all of the plaintiff’s expenses; (i.e. travel expenses to and from the courthouse, income lost in pursuing the claim, or telephone calls to the clerk or the opposing party).

What about a Jury Trial?

A plaintiff wishing to have jury trial must make a request at the time of filing the complaint. The fee for a jury of six is \$12.50, and of twelve is \$25.00. These fees apply to small claims complaints only.

If the plaintiff does not request a jury and the defendant desires to have one, the request and payment must be made no later than the date he/she is required to appear.

The proceedings of a jury trial require significant expertise. If a pro se litigant wishes to have a jury trial, he/she must adhere to the same procedures as an attorney. Once again, we highly recommend retaining an attorney.

I’ve been sued. What do I do?

If you are sued, you will be notified when you receive a copy of the small claims complaint and summons in one of two ways:

1. By certified mail;
2. By hand delivery from the sheriff or private process server, to you or a household member of your family over the age of thirteen.

The complaint will tell you the reason you are being sued and the amount claimed. The summons will tell you when and where to file your answer if you contest the claim. **DO NOT**

IGNORE THE SUMMONS. If you do nothing in response to the summons, the Court will probably award the plaintiff the amount claimed in the complaint plus court costs.

When sued, you may choose to do any one of the following things:

1. Appear on the hearing date and time and advise the Court whether you admit or deny the claim.
2. File a written answer with the clerk before the hearing date denying you owe the plaintiff all or part of the amount claimed.
3. File a complaint against the plaintiff; called a counterclaim, if you believe the plaintiff owes you money in connection with the reason he/she claims you owe him/her money.
4. Settle the dispute out of court.

If you admit owing the amount claimed and you can pay the plaintiff before the first appearance, you may be able to avoid judgment being entered against your name on the court records. Contact the plaintiff immediately if you admit the claim. If you can't pay the whole amount in one lump sum, perhaps you both can agree to installment payments.

If you contest the plaintiff's claim in whole or part, you must appear in person or file an appearance form/answer with the Civil Division of the Circuit Court and pay the appearance fee before the court date.

IMMEDIATELY MAIL A COPY OF YOUR APPEARANCE TO THE ATTORNEY FOR THE PLAINTIFF OR IF NONE, TO THE PLAINTIFF DIRECTLY.

The fees for appearances and answers are listed on page five. If you ignore the court date or do not file an appearance or answer, a judgment by default may be entered against you for the amount claimed plus court costs.

The purpose of the court date is to determine if the claim is contested or uncontested. If the claim is contested, the case will be continued to a trial date. If contested, your answer or appearance must be filed before the trial date or 10 days after the first appearance date, whichever comes first. On the trial date a judge will listen to both sides of the case and render a decision.

If you claim that the plaintiff (the person who filed the case against you) owes you money as a result of the same transaction on which he/she bases his/her claim you may file a lawsuit called a counterclaim against him/her. This is done by filling out a standard small claims complaint form and giving it to the Civil Division along with the filing fee. The person filing the counterclaim is

known as the counter-plaintiff and the person being sued is known as the counter-defendant. The titles on the standard complaint form should be changed renaming the parties. The counter-plaintiff need not serve a summons on the counter-defendant, but must notify him/her by mailing a copy of the counterclaim as soon as possible and be prepared to prove the mailing (i.e., certified mail, return receipt requested). The original complaint and counterclaim will be heard at the same time. The court may postpone such a trial so everyone has an opportunity to be prepared.

You may contact the plaintiff to attempt to settle the dispute out of court. The fact that you offered to settle the case will not be considered against you at trial. If you settle out of court after being served with a complaint and summons, you are wise to have your settlement in writing. The settlement agreement need not be complicated, but should be sufficiently detailed to be enforceable in court if there is a later misunderstanding between the parties. If the case is not settled out of court, it will proceed to a full hearing on the trial date unless the date is continued by the Judge. A case can be continued for various reasons (i.e. illness or death in the family of summons not being served on a defendant).

An oral motion (request) in court for a continuance, or a written motion with an order of continuance (to be signed by the judge) constitutes a request to continue the case at a later date. If a written motion and order of continuance is filed, the document should be filed with the Civil Division before the hearing and a hearing scheduled before the court. The case is not continued by merely filing a motion to continue with a proposed order. The judge must make a ruling on the motion. If the motion is not heard and allowed prior to the trial date and you fail to appear on that date, a default judgment may be entered against the defendant together with costs. If you are the plaintiff and fail to appear, the case can be dismissed and stricken.

How long will it take for a case to go to court?

Generally, it takes two to five weeks from the time the case is filed for the first appearance. Depending on the circumstances, however, this time may vary.

After the first appearance, the small claims clerk will schedule a second hearing, one to eight weeks from the date of the first appearance. The date scheduled for this hearing is called the trial date.

How do I prepare my case for trial?

The plaintiff has to prove by a preponderance of the evidence his/her small claims case. This means that the plaintiff must prove his/her case before the defendant, and that the evidence is

greater or more convincing than the evidence that is offered in opposition to it. The defendant must, if necessary, refute the plaintiff's case.

The evidence used to prove your case will consist of the testimony of witnesses and physical evidence. Before going to court for the trial, you should write down the facts and details of your case in the order which they occurred. Use only the necessary details, but be prepared to tell the whole story. Gather all physical evidence; (i.e. documents, contracts, leases, receipts, cancelled checks, rent receipts, I.O.U's, sales receipts, diagrams, guarantees, warranties, photos of damaged items, etc.).

If you claim the other party carelessly damaged your car, you may prove your loss by a paid repair bill or by bringing as witness a qualified auto mechanic who has inspected the car. Estimates of repair costs are not sufficient for this purpose, unless the persons who prepared them are in court and are qualified mechanics.

You may bring court witnesses to testify to their personal knowledge and observations relevant to the case. Do not bring letters from witnesses on the theory the witnesses could not appear personally. Such letters are not admissible as evidence even though written under oath and notarized. If a witness will not attend the trial, you may compel his/her attendance with a subpoena.

Naturally, you may testify as a witness in your own case. Be prepared to make a brief yet complete statement explaining your side of the case and using your physical evidence, if any. It is a good idea to practice what you are going to say to the judge before you get to court. Write all questions you want to ask your witnesses.

If you intend to support your claim by something said to you or your witnesses by the defendant, let the judge know when and where the conversation took place and who was present to hear the admission.

If you have several paid bills, which you claim the defendant owes you, it is helpful to prepare a separate list of those items and amounts, and total the amount claimed.

Be prepared to show your exhibits to the opposing party as the judge may direct you to do this before the trial begins.

After the trial begins it is extremely rare for the judge to allow the trial to be continued, so be prepared to prove your entire case. You should plan ahead to refute the evidence of the opposing party.

What is a witness subpoena?

To assure appearance by a witness, you may ask the Circuit Clerk's Office to issue a subpoena to make him/her appear. You must complete the face of the subpoena by filling in the caption of the case as well as the name and address of the witness.

The subpoena may be delivered to the witness by the sheriff or private process server. The cost of serving the subpoena varies depending upon the distance between the Sheriff's Office/private process server and the place where the subpoena is served on the witness. Also, the witness is entitled to advance payment of a fee of \$20.00 plus \$.20 per mile each way for necessary travel. The winning party may ask the court to order the losing party to reimburse him/her for those expenses.

A witness should be subpoenaed a reasonable period of time in advance of the trial date so he/she can arrange to come to court.

What happens on the return date?

Both parties should appear in court on the return date. If the defendant admits to liability, the court will enter judgment in favor of the plaintiff. If the defendant disputes the claim, the court will set the matter for trial.

What if the defendant fails to appear?

If the defendant fails to appear, judgment will be entered in favor of the plaintiff, provided that his/her complaint is verified. If the complaint is not verified, the plaintiff will have to produce some form of evidence.

Verification is the process where some party who is familiar with the facts signs the complaint, guaranteeing that everything provided for in the complaint is accurate. If the plaintiff fails to appear, the case will be dismissed.

What happens on the trial date?

Small Claims Court is normally simple and straight forward. The plaintiff presents his/her evidence first, including any witnesses or physical evidence. The defendant then presents his/her case. After the judge listens to both sides, he/she decides the case.

Bring your physical evidence and witnesses, if any. Ask your witnesses to read this section of the manual.

You will have to wait while routine matters and other cases are heard. While waiting for your case to be called, listen to the other cases to learn the courtroom procedure. When your case is called, step up before the judge with your witnesses. If the other side does not appear, the judge will probably enter a judgment in your favor, but he/she may require you to present proof, so be prepared.

If your opponent appears for trial, the parties and the witnesses will be placed under oath and must tell the truth. The plaintiff will present his/her case first. He/she should tell the judge exactly what happened mentioning dates, times, and places. The witnesses, if any, should be questioned and all physical evidence given to the judge. After each of the plaintiff's witnesses testifies, the defendant has an opportunity to ask questions of them.

When the plaintiff finishes presenting his/her proof, it is the defendant's turn. He/she may also testify himself/herself, ask questions of his/her witnesses and present physical evidence to the judge. The plaintiff also has the right to question each of the defendant's witnesses. The plaintiff and defendant can also question each other.

When presenting your case, be brief, stick to the facts. Use the outline and questions you have prepared. Tell what happened in the order that it happened. Do not interrupt or argue with any witnesses. Listen carefully so you can tell the judge why you disagree when it is your turn to speak. If the judge asks you questions, answer them clearly and directly.

After hearing both sides the judge will, based upon the law and the facts, reach a decision called a judgment. He/She may award the plaintiff all or part of the money claimed or find in the favor of the defendant. The judgment is in writing and entered on the court records. The judgment will usually require the losing party to pay the winning party's court costs.

The Small Claims Judge will not help one party over the other regardless of the presence or absence of attorneys. The judge may conduct or participate in the direct and cross-examination of any witness at an informal meeting.

How do I obtain my money after a judgment has been rendered?

Once the judge has entered a judgment in the case, it is up to the plaintiff, not the judge or the Circuit Clerk's Office, to collect the money.

The plaintiff may ask the defendant to pay him/her immediately. If the defendant is not present, the plaintiff can let the defendant know what judgment has been rendered and ask him/her to

pay. When you are unable to obtain payment of the judgment from the defendant, there are options available to you which will force the defendant to comply with the court's award of damages. If the defendant has no money, income, or property, there is nothing the judge or the Circuit Clerk's Office can do.

If the defendant has money, income, or property, but refuses to pay, the plaintiff may file collection proceeding papers at the Circuit Clerk's Office. These papers may assist in the collection process.

If the plaintiff knows the defendant's place of employment, a wage deduction summons can be issued. A non-wage garnishment summons can be issued if the plaintiff knows where the defendant has a bank account, or of any of the defendant's uncollected debts on which a lien can be placed. These summonses are orders to the defendant's employer, bank, or others owing money to the defendant which demand partial payment, using the defendant's earnings/assets, to the plaintiff.

If the plaintiff does not know where the defendant works, where he/she has bank accounts, or if he/she owns property or other assets, the plaintiff can request the Circuit Clerk's Office to issue a citation to discover assets. This is a document that orders the defendant to appear in court and testify, under oath, about the existence and whereabouts of any of his/her assets or his/her place of employment. Each of these proceedings requires a fee, which may be added to the defendant's debt.

Once payment has been collected, the plaintiff should give the defendant a satisfaction of judgment. This is a document filed with the Civil Division of the Circuit Clerk's office and given by the plaintiff to the defendant stating that payment has been collected.

What can be done after the judgment has been rendered?

If a judgment of default was rendered at the first appearance, the defendant can file a motion to vacate within thirty days. A motion to vacate should explain why the defendant failed to appear. Good cause must be shown (i.e. service settlement prior to court). The filing fee for a motion is listed on our website www.sangamoncountycircuitclerk.org, under fees.

After the trial is over, either party may file a motion to reconsider within thirty days. The same judge who heard the original case must also hear the request to reconsider the judgment. When preparing the motion, the petitioner must explain the specific mistake made by the judge when making his/her decision.

A judgment can be appealed to the Fourth District Appellate Court. This is a completely different proceeding and requires a separate filing.

Miscellaneous Information

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

If you should change your address after you file your case or your appearance, be certain to notify the clerk and the opposing party of your new address. Likewise, if you change your phone number, notifications to the clerk must be in writing.

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 courtroom is opened at 8:40 am and 1:15 pm.

Court reporters are not provided for small claims. If you want a transcript of your trial, you must arrange for a court reporter.

Written contracts have a ten (10) year statute of limitation; and oral contracts have a five (5) year statute. The statute of limitation limits the amount of time an individual has to claim that a contract has been violated.

Further information regarding the process of the Small Claims Court may be found in the recent edition of Illinois Code of Civil Procedure and Rules of Court. If there are any questions still unanswered about the procedures in the Small Claims Court, please contact the Illinois Bar Association.