

Sangamon County Circuit Clerk Anthony P. Libri

Small Claims Court Manual

The purpose of this guide is to explain, in simple language, workings of Small Claims Court in Sangamon County. Because procedures differ from county to county, much of this information may not apply elsewhere. Although every attempt at accuracy has been made, the authors are not able in any way to warrant the legal correctness of information contained in this booklet and strongly urge you to consult with an attorney of your choice. This information should prove helpful to both plaintiff (the complainant, or person filing the case) and defendant (person being sued) in Small Claims Court proceedings.

What is Small Claims Court?

Small Claims Court is part of the Sangamon County Circuit Court. It decides court cases involving monetary claims of \$10,000 or less.

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

Who may use the Small Claims Court?

Any person 18 years of age or older may file a small claims case. People under 18 must have a parent or guardian file claims for them. The amount of money claimed may not exceed \$10,000.

Do I need an attorney to file a claim?

While individuals are not required to have an attorney in small claims court, it is recommended.

Plaintiffs filing claims without assistance of an attorney are pro se. A pro se plaintiff must perform all investigations and preparations performed by an attorney, including, but not limited to securing witnesses, collecting documents and photographs, gathering evidence, and anything else required to present cases to the Court.

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

How do I file a Small Claims Complaint?

If you file a Small Claims suit, you are the plaintiff. Defendants in Small Claims Court are the people sued. 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 form that explains who you are suing, where the person lives, how much money they owe you and why they owe you money. The plaintiff signs the complaint. You must list defendant's exact name, address and, if known, phone number. Circuit Clerk employees are not able to assist you in retrieving information regarding the defendant or in completing the form for complaint.

Persons and businesses must sue and be sued in their legal name. Before filing your case, check a phone book for the correct spelling, address and phone number of the defendant.

Where do I get the forms I need to file a Small Claims Complaint?

These forms are available from the Sangamon County Circuit Clerk, Civil Division. Once forms are completed, you will file them with the Civil Division of the Circuit Clerk's office and pay standard filing fees.

In which county do I file my claim?

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

1. Defendant resides; or,
2. 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 claim in the wrong county will not cause the case to be "thrown out," but may result in unnecessary court costs, delay and transfer of the case to the correct county.

How much does it cost to file a claim?

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

Plaintiff must pay:

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

In addition, Plaintiff must pay a Service Fee (to notify defendant of case) for the certified mailing of summons (if used) by the Circuit Clerk at a Plaintiff cost of \$9.50 per Defendant. For service fee cost charged by Sheriff, contact Sangamon County Sheriff's Office, Civil Process Division. You may also have service by a private process server.

Defendant must pay:

Appearance and answer fees:

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

Counterclaim/third-party complaint fees:

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

Motion fees:

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

Jury Demands:

- A) Small Claims with six jurors cost \$12.95
- B) Small Claims with twelve jurors cost \$25.00

If you win, the judge may award you costs in addition to money you are seeking. Before filing the complaint, you should make sure that defendant has money, income or property so that if the judge decides in your favor, your judgment will be collectable. You should also make sure that you are suing the proper party. If you have questions, it is generally inexpensive to consult with an attorney before filing your complaint.

Our Illinois Constitution prohibits a judge from putting a person in jail for failure to pay a debt. Therefore, if a person does not have money, income or property, there may be no legal way for the court to help you get money owed to you. It is wise to make sure a judgment can be collected before paying the costs of a lawsuit.

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

If you cannot afford the filing fee, you may ask a judge to allow you to file your complaint without paying it. You begin by completing and filing an application to sue as a poor person or defend as an indigent person. After you have completed the form and delivered it to the Civil Division, a clerk will send it to the judge. If the judge waives the filing fee, that will also waive the sheriff's fee for service. According to Supreme Court Rule 298, an application to sue or defend as a poor person must be written and supported by an affidavit by some other person having knowledge of the facts stating:

1. Applicant's occupation or means of subsistence
2. Applicant's income for the year preceding application
3. Source and amount of any income expected by applicant
4. Nature and value of any property, real or personal, owned by applicant
5. Particulars of all previous applications for leave to sue or defend as a poor person
6. Applicant is unable to pay cost of suit
7. Applicant has a meritorious claim or defense

Fees are waived for approved applications.

What information is in the small claims complaint?

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

1. Amount of money claimed
2. Type of claim, including dates and facts in brief

3. If the complaint is based upon a written document (for example, 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.

May corporations sue, be sued, and how do they defend themselves?

Unless represented by counsel, no corporation may appear as a claimant, assignee, subrogee or counter-claimant in a small claims proceeding. When an amount claimed does not exceed the jurisdictional limit of \$10,000 for small claims, a corporation may defend in small claims proceeding through any officer, director, manager, department manager or supervisor of the corporation as though the corporation was appearing as a person. For the purpose of this rule, the term "officer" means the president, vice president, registered agent or other person vested with responsibility of managing the affairs of the corporation. (Supreme Court Rule 282(b)).

What if the defendant (the person you are suing) is a corporation?

If you sue an incorporated business, you must use its legal name, which may be different from the name familiar to you. The Illinois Secretary of State's Incorporation Division publishes *Certified List of Domestic and Foreign Corporations* that states a corporation's legal name, and the name and address of its registered agent. A summons may be served upon a corporation's registered agent.

If you intend to sue the owner of an unincorporated business which operates under an assumed name (such as an 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 may be worthless.

How do I start a small claims case?

Step one: complete an original and two copies of the standard forms: small claims complaint and small claims summons. These forms are available from the Civil Division. Once forms are completed, file them with the Civil Division, Circuit Clerk's Office and pay required filing fees.

Step two: arrange to notify 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 defendant. If defendant is to be served in Sangamon County, deliver summons to the Civil Process Division of the Sangamon County Sheriff's Office. If defendant is to be served outside Sangamon County, arrange to deliver summons to the sheriff or private process server in the appropriate county.

Second, if defendant has a mailing address in Sangamon County, you may choose to give notice by serving summons by certified mail, return receipt requested. You should complete and sign a certified summons. The fee for certified mailing is \$9.50 for every individual to be served. The US Postal Service may be used for delivery of a summons ONLY if the defendant has a Sangamon County mailing address. However, if the postal carrier is unable to obtain the necessary signature of defendant on the postal receipt (green card), it will be necessary for the Circuit Clerk to issue a second (alias) summons. The cost for an Alias Summons is \$4.00.

What is a summons?

A summons is a pre-printed, legal form available from the Circuit Clerk's Office, Civil Division. The plaintiff MUST complete the summons. Summonses notify defendants they are being sued, and state the date for the first appearance hearing. Courts are not able to hear a case until the defendant is served the summons. Attached to the summons is a copy of the complaint telling the defendant the reason for the suit and the money amount claimed.

When you file your suit, you should set a court date (called a first appearance) of not less than 14 or more than 40 days after the issuance of the summons. It has been found that a court date 30 days from the filing of the suit is usually sufficient time for service upon the defendant. First appearances for pro se cases are heard every Friday at 9:00 am. Before selecting a hearing date, the plaintiff should consult the Civil Division to avoid court holidays and dates that are already filled with other cases.

Failure to deliver the complaint and summons may cause the defendant not to appear; then, you must prepare an Alias Summons. Usually, the Sheriff serves the Alias Summons. **Plaintiff and/or plaintiff's attorney must *always* appear at first appearance, even if service has not been made. Failure to appear may result in the case being dismissed for want of prosecution.**

What happens at first appearance hearing?

The case will not be heard for trial at first appearance. If defendant is served with a summons and does not appear, default judgment may be entered for the amount stated in

the complaint, plus court costs. The matter to be resolved at first appearance is whether the defendant agrees to the debt. If defendant appears and denies the claim, a trial date is set six to eight weeks in the future. If defendant agrees to the debt stated in the complaint, a judgment may be entered in favor of the plaintiff for the amount plus court costs. Issues such as the ability to pay are not considered at first appearance. Motions, evidence, and matters other than agreement to the monetary claim are not considered at the first court date.

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 court costs. This may include the cost of filing suit, service fees and subpoena fees. The judge may also assign costs to the winning party.

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

What about a Jury Trial?

At the time of filing a complaint, plaintiff must decide whether to demand a jury trial and, if so, whether the jury size will be six or twelve jurors. If plaintiff does not file the demand when the suit begins, right to a jury trial is lost. Defendant, at filing time, may also demand a jury trial. The party demanding a jury must pay \$12.50 for a jury of six and \$25.00 for a jury of twelve jurors. These fees apply to small claims complaints only. Pro se litigants must adhere to the same procedures as an attorney when a jury trial is used. **A jury trial is a complex proceeding and requires significant expertise. Once again, we highly recommend retaining an attorney.**

I have been sued. What do I do?

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

1. Certified mail;
2. Hand delivery from the sheriff, or private process server, to you or a household member over the age of thirteen.

The complaint will tell the reason for the suit and amount of money claimed. The summons will tell you when and where to file your answer if you deny the claim. **DO NOT IGNORE A SUMMONS.** If you do nothing in response to the summons, the Court will probably award plaintiff the money claimed, and court costs.

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

1. Appear on the first appearance 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.
4. Settle the dispute out of court.

If you admit owing the amount claimed, pay the plaintiff before first appearance, avoiding judgment being entered against you in court records. Contact the plaintiff immediately if you admit the claim. If you cannot pay the whole amount in one lump sum, perhaps you both can agree to installment payments. These are matters to be resolved between plaintiff and defendant, or their attorneys.

If you contest the plaintiff's claim in whole or part, you must appear in person or file an appearance at the Civil Division of the Circuit Clerk's Office, and pay an appearance fee before the court date.

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

The purpose of first appearance is to determine if the claim is contested or uncontested. The case will be set to a trial date if the claim is contested, and your answer or appearance must be filed before the trial date or 10 days after 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 owes you money because of the same transaction, you may file a lawsuit called a counterclaim to recover your money. To do this, file a standard small claims complaint form and give it to the Civil Division along with the filing fee. The person filing the counterclaim is the counter-plaintiff and the person sued is the counter-defendant. The titles on the standard complaint form are changed, renaming the parties. Counter-plaintiff must notify by mailing a copy of the counterclaim to counter-defendant. A summons is unnecessary. Counter-plaintiff must be prepared to prove the mailing (i.e., certified mail, return receipt requested). The original complaint and counterclaim are 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 a dispute out of court. If you settle out of court after being served with a complaint and summons, you are wise to have your settlement in writing. Settlement agreements need not be complicated, but should be clear to avoid a later misunderstanding between the parties. Cases not settled out of court,

proceed to a full hearing on the trial date. The judge may continue a trial date. A case may be continued for various reasons (e.g., illness or death in the family, summonses not being served on a defendant, etc.).

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 to a later date. If a written motion and order of continuance is filed, the document should be filed with the Civil Division before the trial date and a hearing scheduled before the court. A 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 allowed prior to the trial date and you fail to appear on that date, a default judgment may be entered against you, together with costs. If you are the plaintiff and fail to appear, the case may be dismissed.

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

Generally, it takes two to five weeks after filing for first appearance. Depending on the circumstances, however, this time may vary.

After first appearance, small claims clerks 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?

Plaintiff has to prove by a preponderance of evidence the small claims case. This means that a plaintiff must prove that the evidence is greater, or more convincing, than the evidence offered in opposition. The defendant should refute the plaintiff's case.

Evidence used to prove your case consists of the testimony of witnesses and physical evidence. Before going to court for the trial, you should write down facts and details of your case in the order they occurred. Use only necessary details and be prepared to tell the whole story. Gather all 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 presenting a paid repair bill or by bringing as witness a qualified auto mechanic who has inspected your car. Estimates of repair costs are not sufficient, unless the preparer, a qualified mechanic, is in court.

You may bring witnesses to testify personal knowledge and observations relevant to the case. Do not bring letters from witnesses on the theory 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 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. It is a good idea to practice what you are going to say to the judge before you get to court.

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 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 the witness 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 Sheriff or private process servers deliver a subpoena. The cost of serving the subpoena varies depending upon the distance traveled to serve the order. Also, attach an advance payment of a fee of \$20.00 plus \$.20 per mile each way for necessary travel by the witness. The winning party may ask the court to order the losing party for expense reimbursement.

A witness should be subpoenaed a reasonable time in advance of the trial date.

What happens on the return date?

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

What if the defendant fails to appear?

Judgment may be entered in favor of plaintiff if defendant fails to appear, provided the complaint is verified. If the complaint is not verified, the plaintiff will have to produce some form of evidence.

Verification is the process where someone 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 may be dismissed.

What happens on the trial date?

Small Claims Court is normally simple and straightforward. First, plaintiff presents evidence. Then, defendant presents. After the judge listens to both sides, a decision is given.

Bring your physical evidence and witnesses, if any.

You may 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, clearly tell the judge you are present and step before the judge with your witnesses. If the other side does not appear, the judge will probably enter a judgment in your favor, but may require you to present proof, so be prepared.

If your opponent appears for trial, parties and witnesses will be placed under oath and must tell the truth. Plaintiff, going first, tells the judge exactly what happened, providing dates, times, and places. The witnesses are 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.

When the plaintiff finishes presenting, the defendant may testify, ask questions of defense witnesses, and present physical evidence to the judge. The plaintiff also has the right to question each of the defendant's witnesses.

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 reach a decision called a judgment, awarding plaintiff all or part of the money claimed or finding in the favor of the defendant. The judgment is in writing and entered on the court records. Usually, the judgment requires the losing party to pay the winning party's court costs.

How do I obtain my money after judgment?

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.

Plaintiff may ask defendant to pay immediately. If defendant is not present, plaintiff may inform defendant of the judgment and demand payment. When you are unable to obtain payment of the judgment from defendant, there are options available to you that will force defendant to comply with the court's award of damages. If defendant has no money, income, or property, there is nothing the judge or the Circuit Clerk's Office may do.

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

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

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

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

What happens after judgment has been rendered?

If a judgment of default was rendered at first appearance, defendant, within thirty days, may file a motion to vacate. A motion to vacate explains why defendant failed to appear.

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

The Fourth District Appellate Court receives appeals of judgments. 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 change your address or phone number after you file your case or your appearance, be certain to notify the clerk and opposing party of your new address or number. Notifications to the Circuit Clerk must be in writing.

All Small Claims Court sessions are public. You may attend any of these courtroom proceedings to familiarize yourself with the procedures.

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-year statute of limitation; and oral contracts are five. The statute of limitation restricts the amount of time an individual has to claim a contract violation.

Further information regarding the process of the Small Claims Court is in the recent edition of *Illinois Code of Civil Procedure and Rules of Court*. For any unanswered questions about Small Claims Court procedures, please contact the Illinois Bar Association.

LEGAL TERMS AND DEFINITIONS:

Alias Summons - A second summons issued because the defendant was not served.

Answer - A court document filed by the defendant responding to the complaint of the plaintiff.

Citation to Discover Assets - A document issued after judgment by the Court Clerk requiring the defendant to reveal under oath the location of his or her bank account, property or name of employer.

Complaint - Court document filed by the plaintiff to initiate the dispute in court.

Defendant - Party being sued.

Execution – Following judgment, an order to the Sheriff to sell property owned by a defendant.

Notice of Motion - A written instrument sent by either plaintiff or defendant, notifying the other party of a court date in which one of the parties is requesting the Court to take action.

Plaintiff - Party who initiates a lawsuit.

Pro Se - Latin term meaning "for himself" or "in his own behalf" and is pronounced "pro say". When a plaintiff files a case without a lawyer's assistance, the plaintiff is filing the case pro se.

Rule to Show Cause - Court order directing a party to appear before the Court to explain why they should not be held in contempt of Court for failure to comply with the Court's previous order.

Service – Delivery of summons issued by the Circuit Clerk is either served by certified mail, by Sangamon County Sheriff, or by a private process server and a return is made either by return receipt from the U. S. Post Office or an endorsement on the summons by the Sheriff, or the private process server. Until a summons has been served, the Court does not have the authority to hear the case. Only the Clerk's office may send the summons by certified mail.

Subpoena - A writ of the Court commanding a person to testify in a pending court case. (Note: In order for the subpoena to be valid, the statutory witness fees and mileage must be paid at the time of service.)

Turn Over Order - An order form used to direct a garnishee to "turn over" or transfer funds or property to a specific person.

Writ of Attachment - An order by the Court to the Sheriff commanding him to take a person into custody for Contempt of Court.

Updated July 2008