

# GUIDE TO SMALL CLAIMS COURT

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## FOURTH JUDICIAL CIRCUIT STATE OF ILLINOIS

Counties of:  
Christian, Clay, Clinton, Effingham, Fayette,  
Jasper, Marion, Montgomery, Shelby

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Office of the Chief Judge  
Montgomery County Courthouse  
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## 1. INTRODUCTION

This pamphlet has been prepared and is distributed as a public service to assist those persons and businesses who appear in small claims court in the Fourth Judicial Circuit. Because of the nature of small claims cases, many litigants in small claims cases choose to proceed without an attorney. Although this guide attempts to present the legal procedures as completely as possible, it is not designed to take the place of sound legal advice. If you do not fully understand the information in this booklet, find the procedures to be complicated, or need advice, you may decide to talk to a lawyer about your case. The circuit clerk and the judge are prohibited from giving you legal advice in regards to your small claims case.

## 2. WHAT IS SMALL CLAIMS COURT?

The small claims court is designed to hear civil cases involving claims of \$5,000 or less, exclusive of court costs and interest. Filing and pre-trial procedures are simplified compared to other lawsuits. However, the rules of law and evidence that apply to other lawsuits also do apply to small claim trials. Certain procedural steps must be completed before you have your day in court.

## 3. WHO CAN SUE AND WHAT CAN YOU SUE ABOUT?

Any person 18 years or older may file a small claims case. Persons and businesses must sue and be sued in their correct legal name. If your business is a corporation and you are bringing the suit, you must be represented by an attorney (See Section 5). If your business is not a corporation, you may sue in your individual name, "doing business as", then put your business name.

If someone owes you money or has damaged you in some way, you can file a lawsuit in small claims court. The amount of the claim can not be more than \$5,000. You can only sue for money or money value – not for the return of property or the performance of services. Any judgment entered by the court will only be for a certain sum of money. Examples of what you can sue about include: payment of an unpaid bill or open account, recovery of unpaid rent, damages to an automobile from a motor vehicle accident, or a suit to recover back wages.

## 4. BEFORE YOU SUE

Before filing your small claims case, consider contacting the other person or business to solve the problem by coming to an agreement or settlement. If successful, you have saved considerable time, effort, and expense. Call or write the other party to explain your position and the settlement you are seeking. You have nothing to lose, but much to gain, by attempting to settle your claim before filing suit. Your offer to settle the case will not be considered against you at trial.

Finally, before going to the trouble of filing a small claims complaint, make sure the other party has the money, income, or property so that the judgment you may receive is collectable. "Debtors Prison" was a thing of old England, but is no longer available. If a person does not have the money, income, or property, there is no legal way for the court to get you the money you are owed even though a judgment has been entered in your favor.

## 5. WHEN MUST A LAWYER REPRESENT ME IN SMALL CLAIMS?

Persons 18 years or older may choose to represent themselves in small claims court. Regardless of your choice, your opponent has a right to be represented by an attorney.

Illinois Supreme Court Rules require a corporation have an attorney if they are bringing the small claims suit. If a corporation is a defendant, the corporation may defend by an officer, director, manager, or supervisor.

A small claims case is speedy and inexpensive. However, it may be too complex for some to handle on their own. Consider having an attorney represent you.

## 6. HOW DO I START A SMALL CLAIMS SUIT?

To begin your small claims suit, you must fill out a complaint and file it with the circuit clerk's office. Form complaints can be obtained in the circuit clerk's office. On the complaint, indicate the name of the person or corporation being sued, the defendant's address and how much is owed. Put on your complaint a short explanation of why the person owes the money. If the complaint is based upon a written instrument, such as a contract, lease, or promissory note, a copy must be attached to the complaint.

The completed complaint form should then be filed with the circuit clerk and the filing fee paid at that time. The circuit clerk will give you a case number and set a time and date when both the plaintiff and the defendant will first appear in court.

If the defendant is a corporation, list the name and address of its registered agent. This information can be found by checking the Corporation Index in the County Clerk and Recorder's Office or by calling the Corporate Search Department of the Illinois Secretary of State at (217) 782-7880.

You must file your complaint in the proper county. Generally speaking, the proper county is where the individual defendant lives, where the corporate defendant does business, or county where the transaction or some part of it took place.

## 7. HOW DO I GET THE OTHER PARTY TO COURT?

When you file your case, the circuit clerk will give you a court date (called return date) which will be not less than 14 days or more than 40 days after the issuance of the summons. The summons is the paper that is served upon the defendant notifying the defendant of the case and the court date. A summons is issued when the circuit clerk signs and dates the summons. The circuit clerk's office has pre-printed forms of summons.

The court has no power to hear a case until the defendant is served the summons. The summons can be served in one of three ways:

1. If the defendant lives or has an office in the State of Illinois, you can have the circuit clerk send the summons to the defendant by certified mail, return receipt requested.
2. If the defendant refuses the certified mail, have the sheriff of the county where the defendant lives serve the summons on the individual defendant or the agent of the corporate defendant. You will have to pay the sheriff's service fee. When you can take your complaint and summons to the sheriff, provide the best possible address (including directions if necessary) for the defendant.
3. You may also have the summons served by a private process server. A motion must be filed with the court for appointment of a private person to serve the documents.

It is the plaintiff's responsibility to follow-up to make sure the summons was served. This is not the responsibility of the circuit clerk. You may contact the circuit clerk's office prior to your first court date to see if there is a "return" (return receipt from the postal service or paper from the sheriff indicating the summons and complaint was served) in the court file.

## 8. COURT COSTS – WHO PAYS?

The circuit clerk of the county where you are filing your complaint will charge you a fee for filing a lawsuit. The fee must be paid when the complaint is filed. The amount of the fee may vary from county to county and depends on the amount you are requesting in your complaint and whether you wish a trial by a jury.

There is another fee charged for delivery of summons to the defendant. If the summons is served by certified mail, you must pay to the circuit clerk the cost of the service by certified mail. If the summons is served by the sheriff, you will pay to the sheriff the service fee for the summons.

If you win your small claims case, the judge will award you the costs of the filing fee and the service fee and order the defendant to pay to you those costs.

#### 9. WHAT HAPPENS AT THE FIRST COURT DATE – RETURN DATE?

After service of summons in a small claims action, the defendant may do any of the following: 1) notify the circuit clerk, in writing at least 5 days prior to the appearance date on the summons, stating that he wishes to contest the claim and setting forth the title and number of the case, his name, address, telephone number, and the name and address of the plaintiff and his attorney, if any; or 2) file a written motion or answer; or 3) appear in person or by attorney on the appearance date, and admit or deny the allegations in the complaint.

Upon being notified that the claim is contested in the manners described above, the court shall fix a trial date and cause all parties to be notified of the time, date, and place of trial.

If there has been service on the defendant and the defendant has not filed a written response or does not show up on the set date, the plaintiff is entitled to a judgment, called a “default judgment”.

If there is no service on the defendant, the plaintiff should appear in court on the return date and ask the judge for the circuit clerk to issue an “alias summons” and again try to obtain service on the defendant. There is an additional charge payable to the circuit clerk for the issuance of an alias summons.

If the plaintiff does not show up in court on the return date, the Judge may dismiss the case.

If both parties appear on the return date and the claim is contested, the Judge will conduct a pre-trial and inquire as to the nature of the case and how long the trial would take. A trial date will then be set.

#### 10. WHAT DO I DO IF THE CASE SETTLES?

If the case settled before the return date, you should let the circuit clerk know. If the case has settled and the money has been paid, then the plaintiff should file a “motion to dismiss” the case. The circuit clerk has a pre-printed motion to dismiss form. If you have settled and the defendant has not paid yet, you should get the defendant to sign an agreed order describing the terms of the settlement including the time and amount of payments. Be sure to remember to include court costs in an agreed order.

#### 11. WHAT DO I DO TO PREPARE FOR TRIAL?

Please know the exact date and time for trial and be there on time. The plaintiff must prove his case. Proof consists 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 in which they occurred. Use only the necessary details, but be prepared to tell the whole story. Gather all physical evidence, for example, contracts, leases, receipts, cancelled checks, rent receipts, photo of damaged items, etc.

You may bring to court witnesses to testify to their personal knowledge and observations relevant to the case. Do not bring letters from witnesses instead of having the witnesses personally appear. Such letters are not admissible in evidence even though written under oath and notarized. If witnesses refuse to attend the trial, you may have the court order the witness to come to court by way of a subpoena. A subpoena commands a person to appear and testify at the trial. In order for a subpoena to be legal, you must advance a witness fee of \$20 and mileage to and from the courthouse at the time of service of the subpoena on the witness. The sheriff must serve the subpoena together with the attached witness fee.

## 12. CAN I HAVE A JURY TRIAL?

At the time of filing the complaint, the plaintiff must decide whether to make a demand for jury trial and decide if he wants the matter to be tried by a jury of 6 or a jury of 12. If the plaintiff does not file the demand at the time that the suit is commenced, the right to a jury trial is waived. The defendant must at the time of the first appearance in response to the summons make a demand for jury. If the defendant does not make such a timely demand, a jury trial is deemed waived. The party demanding a jury must pay a fee, the exact amount is dependent upon whether a 6 person or 12 person jury is demanded. The amount of the fee can be obtained from the circuit clerk.

## 13. IF I HAVE 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: by certified mail or by hand delivery from the Sheriff or other authorized person to you or a member of your household. If you admit owing the plaintiff the amount claimed, you can pay the plaintiff before the trial day. By doing so, you may be able to avoid a judgment being entered on the court records against your name. Contact the plaintiff immediately if you admit the claim. If you can not pay the whole amount in one lump sum, perhaps you both can agree to smaller payments over a period of time.

If you contest the plaintiff's claim in whole or in part, you must do one of three things as listed in Section 9 above, namely: 1) notify the circuit clerk of the court in writing at least 5 days prior to the appearance date on the summons stating that you wish to contest the claim and setting forth the title and number of the case, your name, address, telephone number, and the name and address of the plaintiff and his attorney, if any, or; 2) file a written motion or answer, or; 3) appear in person or by attorney on the appearance date and deny the allegations in the complaint. If you believe the plaintiff owes you money in connection with the reason why he claims you owe him money, you may file a lawsuit, a counterclaim in this same small claims case.

If you contest the claim and do not appear in court or file a written response as directed above, a default judgment may be entered against you.

If the case is settled before it goes to trial, be sure that the plaintiff files a motion to dismiss the case.

## 14. WHAT HAPPENS AT TIME OF TRIAL?

A trial in small claims court will start by the judge calling the case numbers and names. When your case is called, let the judge know you are present. The judge listens to both parties and their witnesses and examines any physical objects that have been brought to court and admitted into evidence. The plaintiff goes first, followed by defendant. Either party can cross examine the other's witnesses or call them as his own witness.

When testifying, try not to be nervous. Speak slowly and loudly. If the judge asks questions, answer them as clearly and directly as you can.

The judge does not want you to argue with the other party or the other party's witnesses or make statements to the judge why you do not believe what the witness is saying. Be prepared before trial with a list of questions you wish to ask the witnesses in the case.

The plaintiff must prove the case by a "preponderance of the evidence" to win the case. In other words, the plaintiff must prove his version to be more true than not.

After hearing both sides, the judge (if no jury) based upon the law and the facts, will reach a decision. This decision is called a "judgment". The court may award the plaintiff all or part of the money claimed or find in favor of the defendant. The judgment is in writing and entered on the court records. The judgment will require the losing party to pay the winning party's court costs. The judge may take the case under advisement, which means that the judge wants to think about the case or do some legal research. If the case is taken under advisement, the judge will enter a written ruling, which the circuit clerk will mail to each of the parties.

The judge can not help one party over the other regardless of the presence or absence of attorneys. However, Supreme Court Rule 286 does allow the judge to hear and decide small claims disputes at an informal hearing. During such a hearing, the judge may ask questions of any witnesses or party. In such hearings, the rules controlling procedure and evidence may be "relaxed or loosened" by the judge.

#### 15. IF I DISAGREE WITH THE JUDGE'S DECISION, CAN I APPEAL?

Yes, if you disagree with the judge's decision, you can appeal. You must file a "notice of appeal" in writing with the circuit clerk within 30 days of announcement of the judge's decision. The appellate court which would hear the appeal is the Fifth District Appellate Court in Mt. Vernon. You may want an attorney's advice on whether and how to appeal. Unless excused, a bond is required to stop enforcement of a judgment pending appeal.

#### 16. IF I WIN, HOW DO I GET MY MONEY?

If you are the plaintiff in the case and the judge decides in your favor, finds the defendant owes you the money, the judge will enter a judgment in your favor. The judgment is the judge's decision. You should ask the defendant to pay you immediately. If the defendant was not present when the judgment was awarded, a default judgment, you should inform the defendant in writing that a judgment has been awarded and ask for payment. If the defendant refuses to pay you the amount of the judgment, you must begin collection proceedings. Neither the judge nor the circuit clerk may collect the money for you. You are responsible for the preparation of all documents and the payment of all additional fees and charges. However, these additional fees may be recouped from the defendant.

If you do not know where the defendant works, has bank accounts, or owns property, you can have the circuit clerk issue a "citation to discover assets". The citation to discover assets is set for hearing. Both parties must appear at the citation hearing. The defendant is placed under oath and must answer questions by you concerning employment, location of bank accounts, sources of income, as well as any property owned. If the defendant does not appear for the citation hearing, the court may issue a rule to show cause why the defendant should not be held in contempt of court for failure to appear or the court may issue a body attachment for the defendant failing to appear in court. The citation to discover assets, which will have on it the court date, must be served by the sheriff on the defendant. There is additional cost involved for the issuance of a citation and service by the sheriff. You must pay these costs, but they may be recouped from the defendant.

In the event that a defendant fails to make payments per a payment order or fails to appear at a citation to discover assets hearing, the court may direct the circuit clerk to issue a "rule to show cause". A rule to show cause is served by the sheriff on the defendant and demands that the defendant show cause why he should not be held in contempt of court for failure to follow the court's order. If found in contempt, the defendant may be sanctioned by being held in jail. If the defendant fails to appear at the rule to show cause hearing, a body attachment may be issued by the court directing that the sheriff take the person into custody and hold the person until the day of court or until bond is posted.

If you know the defendant has real estate in a certain county, you can have the judge sign a Memorandum of Judgment. Record the memorandum of judgment in the County Clerk and Recorder's Office where the defendant owns real estate. It will place a lien on the defendant's real estate in that county.

Collection may be made by Wage Deduction Summons, if you know where the defendant is employed or by Non-Wage Garnishment Summons, if you know where the defendant has bank accounts. The parties to whom you direct the Wage Deduction Summons or Non-Wage Garnishment Summons must file a sworn answer. After this is filed with the circuit clerk, you must appear in court and the court will enter an appropriate judgment against the garnishee for the amount shown in the sworn return and sign a Turn Over Order. A certified copy of this order should be sent to the garnishee for your money. You may use this as often as necessary for the collection of the total judgment awarded, plus the additional costs. The circuit clerk's office will have pre-printed forms for wage deduction summons and non-wage garnishment summons.

After the judgment has been collected, a form called a "release and satisfaction of judgment" should be prepared by the plaintiff and filed with the circuit clerk. Certain property of the defendant is exempt from collection. Please refer to the statute for a list of exempt property.

17. COURT RULES ON SMALL CLAIMS

FOURTH JUDICIAL CIRCUIT RULE 9:

SMALL CLAIMS ACTIONS

9-1 Procedure:

(a) Response by the defendant: After service of summons in a small claims action, the defendant may do any of the following:

(1) Notify the clerk of the court, in writing at least five (5) days prior to the appearance date on the summons, stating that he wishes to contest the claim and setting forth the title and number of the case, his name, address, telephone number and the name and address of the plaintiff and his attorney, if any, or;

(2) File a written motion or answer, or;

(3) Appear in person or by attorney on the appearance date, and admit or deny the allegations in the complaint.

(b) Failure of Defendant to Respond: If a defendant fails to respond as stated above, a default may be entered and judgment for the amount claimed, plus costs, may be taken against him.

(c) Setting of Trial Date: Upon being notified that the claim is contested, the court shall fix a trial date and cause all parties to be notified of the time, date and place of trial.

(d) Summons Appearance Date Not Considered the Trial Date: Unless otherwise ordered by the court, the appearance date as noted on the summons shall not be the date of the trial.

(e) Demand for Trial by Jury: Upon defendant's demand for trial by jury and payment of the jury fee, the court shall automatically set the cause for trial and cause notice to be given. If jury demand is made by the plaintiff, the date for trial shall not be set until after the appearance date as noted on the summons.

(f) Notice of Small Claims Rule: The clerk of the court shall transmit with each summons a copy of this rule and any other information deemed necessary by the court. Subsections (b) and (d) shall be in bold type in such notice.

18. GLOSSARY OF TERMS

**Alias Summons** – a subsequent summons issued in a case, in which the earlier summons was not served or the defendant was not found.

**Answer** - a written statement of the defendant's case wherein the plaintiff's claims are admitted or denied.

**Appearance** - the formal proceeding or document by which a defendant submits to the jurisdiction of the court.

**Body attachment** – an Order, by the court to the sheriff, to take a person into custody and to hold defendant until the day of court or admitting defendant to bail for a future court date.

**Circuit Clerk** - this elected official is responsible for maintaining the court records, issuing summons and subpoenas, collecting fines, and carrying out other business activities which support the circuit court.

**Citation to Discover Assets** – a process issued by the circuit clerk, after judgment, which requires the defendant to reveal under oath the location, if any, of bank accounts, property owned, or name of employer.

**Complaint** - initial document filed by the plaintiff in a civil case stating the claims against the defendant.

**Counterclaim** - claim presented by a defendant against the plaintiff following the claim of the plaintiff.

**Defendant** - in a criminal case this is the person charged with committing a crime. In a civil case it is the person(s) or corporation from which the plaintiff wants to collect damages.

**Evidence** - any form of proof presented by a party for the purpose of supporting its arguments before the court.

**Hearsay** - evidence based on what a witness has heard someone else say rather than what the witness has personally experienced.

**Inadmissible** - that which, under the established rules of evidence, cannot be admitted or received in court.

**Judgment** – a decision by the court. If judgment is for the plaintiff, it means the defendant owes the plaintiff the amount indicated in the judgment, plus costs of suit. If judgment is for the defendant, it means the defendant does not owe the plaintiff anything on the claim, including court costs.

**Order to Show Cause** – this is an order by the court, directing a party to appear before the court on a certain day, to show the court why he should not be held in contempt of court because of failure to comply with the court's previous order.

**Plaintiff** - in a civil case the person(s) or corporation asserting a claim for damages allegedly sustained as a result of the conduct of the defendant.

**Pro Se** - (short form of "*in propria persona*," which is Latin for "*in one's own proper person*." ) To act as one's own attorney in a civil or criminal matter.

**Service** – the delivery of the summons to the defendant. Until a summons has been "served" on the defendant, a court does not have authority to hear the case and entered a judgment.

**Subpoena** - a document issued by the court to compel a witness to appear and give testimony or to procure documentary evidence in a proceeding.

**Summons** – the court document issued by the circuit clerk, commanding the defendant to file an appearance or appear in court for trial.

**Testimony** - the sworn evidence presented by witnesses.