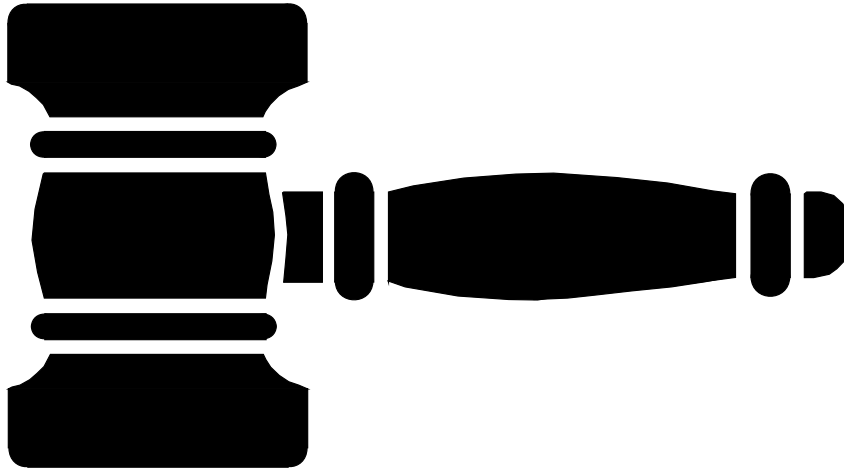


SMALL CLAIMS BOOKLET



MAUREEN A. JOSH
CLERK OF THE CIRCUIT COURT
16TH JUDICIAL CIRCUIT
DEKALB COUNTY, ILLINOIS

DEKALB COUNTY COURTHOUSE

133 West State Street
Sycamore, IL 60178

**CIRCUIT COURT
SIXTEENTH JUDICIAL CIRCUIT
DEKALB COUNTY**

**MAUREEN A. JOSH
CLERK OF THE CIRCUIT COURT**

SMALL CLAIMS DIVISION

(815) 895-7131

OFFICE HOURS

Monday through Friday
8:30 A.M. - 4:30 P.M.
Closed Saturday, Sunday, and all legal holidays.

WHAT IS SMALL CLAIMS COURT?

The Small Claims Court is a court specifically designed to hear those cases involving claims of \$10,000.00 or less and where litigants are not required to be represented by counsel.

WHERE IS IT LOCATED?

The Small Claims Court is located at the DeKalb County Courthouse, at 133 West State Street, in Sycamore, Illinois. The Small Claims Division of the Circuit Clerk's Office is located in Room 202, on the second floor.

WHO CAN USE THE SMALL CLAIMS COURT?

Anyone can file a lawsuit in the Small Claims Court if the amount claimed is not more than \$10,000.00. If you choose to act as your own attorney, you must do all of the investigation and preparation normally done by the attorney including representing yourself in Court, securing the attendance of witnesses, collecting documents acceptable as evidence, and giving parties to the lawsuit proper notice as to motions and the like. (THIS WILL NOT BE DONE FOR YOU BY THE JUDGE, CLERKS, OR BAILIFFS.)

CAN A CORPORATION REPRESENT ITSELF?

Generally no, it must have an attorney. However, they may defend themselves in actions up to \$1,500.00. See Supreme Court Rule 282(b).

HOW DO I FILE SMALL CLAIMS CASE?

If you file, you are called the PLAINTIFF. (You are called the DEFENDANT if you are the person being sued.)

To file a Small Claims suit, a "complaint" must be filed with the Clerk of the Circuit Court. (Located on the second floor, Room 202, of the Courthouse.) Small Claims complaint forms and summons forms are available, free of charge, from the Circuit Clerk.

The complaint form should be filled in as completely as possible. The exact name and address of the defendant is critical so that proper notice can be given to the party you are suing. Also, a short statement as to the nature of the claim is required, and if the claim is based on a written instrument or contract, copies must be provided to be attached to the original complaint and the copy of the complaint, which is to be served on the defendant.

In addition, a "New Case Information Sheet" is also completed by the Plaintiff. (This is also provided at the Clerk's office.)

The complaint and New Case Information Sheet are filed with the Clerk of the Circuit Court upon payment of the appropriate filing fee.

Small Claims cases are heard by the Court on Wednesdays at 9:00 A.M. When preparing your summons, you will select an appropriate date from fourteen (14) to forty (40) days from the day you file your case.

If the defendant appears and does not contest the claim, and your complaint is verified (notarized), then the Court may enter a judgment in your favor and against the defendant for the amount claimed plus allowable Court costs (usually the filing fee and the Sheriff's fee).

If the defendant appears and contests the claim, then the case will be assigned for trial on a subsequent specific date. (The Judge will tell you the date and time.) It will usually be a Wednesday afternoon at 1:30 P.M.

HOW MUCH WILL IT COST TO FILE MY CLAIM?

For filing a complaint with damages from \$1.00 to \$500.00 the fee is \$85.00. For filing a complaint with damages from \$501.00 to \$10,000.00 the fee is \$100.00. An appearance fee for defendants in claims under \$500.00 is \$80.00. An appearance fee for defendants in claims over \$500.00 is \$85.00.

CAN THE DEFENDANT PRESENT CLAIMS OF HIS OWN?

Yes, by filing a counterclaim for the items he/she is claiming. This may be done by using a complaint form, and changing the name of the document to "Counterclaim". This must be served on the other side.

WILL THE TRIAL BE BEFORE A JUDGE OR A JURY?

At the time of filing a complaint, the plaintiff must make a demand for a jury trial and decide if he/she wants a jury of six or twelve persons. If the Plaintiff does not file a jury demand at the time that the suit is begun, then he/she is deemed to have waived a jury trial.

The Defendant must, at the time of filing his/her appearance make a demand for jury trial by either six or twelve jurors or be deemed to have waived a jury trial. The party demanding a jury trial may pay an additional fee of \$12.50 for jury of six people and \$25.00 for a jury of twelve people.

If there is no jury demand, then the trial will be heard by a Judge (referred to as a "bench trial")

WHAT WILL HAPPEN AT TRIAL?

The Judge must follow the same rules of law and evidence used in civil cases whether or not you have a lawyer. The Plaintiff has the burden of proving sufficient facts to establish that he/she is entitled to a judgment, by a preponderance of the evidence. The defendant, of course, has the right to present his/her case to establish that the plaintiff is not entitled to a judgment.

At the time of trial, you should bring with you all the evidence that might have some bearing on the case including any bills, letters, leases, other writings, documents, photographs, or other physical objects to be used at trial.

At the time of trial, you should also bring with you to Court and have ready to present to the Judge any repair bills for the damage claimed, if applicable. A bill that has been marked on its face as having been paid is normally admitted into evidence for establishing that the repair work was done and that the charge for the work was reasonable.

There is no Court reporter provided. If you wish to have a transcript of the testimony, you will have to contract for the services of a qualified court reporter, and you will be responsible for the costs incurred.

You have the right to present the testimony of witnesses other than yourself to the Court. A witness is a person who can help explain why you should win the case. Make sure that your witnesses appear on the exact date and time for trial. If a witness is necessary for your case and is reluctant to come to Court, you may use a subpoena, which must be served on the witness personally along with payment to that witness of the proper fees and mileage reimbursement. This form is also available from the Circuit Clerk. Written statements or affidavits from witnesses who are not present are not admissible into evidence.

The Plaintiff presents his/her evidence first, subject to cross-examination by the defendant. If the Plaintiff proves sufficient evidence to establish a case, then the defendant may present evidence on his/her behalf. The Judge will rule on the admissibility of evidence and exhibits from time to time as may be necessary and then, at the end of the case, will usually issue an immediate ruling on the case.

When the Judge (often referred to as the "Court") decides the case, he/she enters a judgment either for the Plaintiff or the Defendant for whatever amount is found to be due and assesses Court costs.

CAN I APPEAL THE JUDGMENT?

Yes. Either party has the right to appeal the ruling of the Court to the Second District Appellate Court, in Elgin, Illinois. Normally, appeals are not taken from Small Claims, as they can be very costly and time consuming.

HOW DO I GET MY MONEY IF I WIN?

Collecting your judgment is not automatic, and the Judge, Clerk, Bailiff, Sheriff, or other Court related personnel cannot do this for you. (COLLECTION OF ANY JUDGMENT AWARD IS YOUR RESPONSIBILITY.)

As a matter of common courtesy, you should first ask the defendant about arrangement for payment if he/she is in Court when the judgment was entered. If the Defendant was not in Court at that time, notify him/her about it and ask about payment. Unpaid judgments do carry interest at a statutorily determined rate. If the defendant refuses to pay or does not make satisfactory arrangements for payment, then you must collect the judgment yourself.

WHAT HAPPENS IF THE JUDGMENT IS SETTLED OR PAID IN FULL?

A form entitled "Release and Satisfaction of Judgment" must be filed at the Circuit Clerk's office by a successful party (sometimes a judgment for a specific amount is entered in favor of a defendant). The party paying the judgment should get such a form from the Circuit Clerk's office, complete it properly, have it signed by the Plaintiff (or his/her attorney) and then file it with the Court at the Circuit Clerk's office.

WHAT HAPPENS IF THE DEFENDANT PAYS THE CLAIM BEFORE THE COURT DATE?

If the defendant pays the Claim before the date on the summons, the plaintiff may come to the Circuit Clerk's office and fill out a form dismissing the case before the Court hearing date. Then it will not be necessary for either side to be in Court.

LEGAL TERMS AND DEFINITIONS

COMPLAINT

The Court document filed with the Circuit Clerk, which includes a statement of the wrong or harm done to the Plaintiff by the defendant and a request for specific help from the Court.

DEFENDANT

The person (party) being sued.

NOTICE OF MOTION A written pleading prepared and sent by one party to the other notifying the other party of a Court date when you will be requesting the Court to take some action. The original with proof of service (which can be by regular mail after the party served has formally "appeared" in the case) must be served upon the party within certain time requirements set forth by statute and the Rule of the Illinois Supreme Court.

PLAINTIFF

The person (party) who starts the lawsuit.

PRO SE

A Latin term meaning "for himself" or "in his own behalf". When a Plaintiff files his/her case without being represented by an attorney, that person is PRO SE.

SERVICE

A summons issued by the Circuit Clerk is either served by certified mail if the defendant is to be served in DeKalb County (the Circuit Clerk will do the mailing) or by the appropriate County Sheriff, and the return is made by either the U.S. Postal System or endorsement on the original summons by the Sheriff (either of which is returned to the Circuit Clerk for filing). Until a summons has been properly served, the Court does not have the authority to hear the case.

RULE TO SHOW CAUSE

An order by the Court directing a person to appear on a certain date and time to show the Court why such person should not be found in contempt of Court for failure to comply with the Court's previous order (not for failure to simply pay a judgment, however).

SUBPOENA

A writ of the Court commanding that a person appear to

testify or bring documents in a pending Court case.

SUMMONS

The Court document issued by the Circuit Clerk commanding the Defendant to file an appearance (a written form) or appear in Court to respond to the complaint.

ALIAS SUMMONS

A second summons issued in a case where a return of service has been made indicating that the Defendant was not found or otherwise served.

WRIT OF ATTACHMENT

An order by the Court directing the Sheriff to take a person into custody for contempt of Court and to hold the person in jail until brought before the Court.

These definitions and the foregoing outline of Small Claim Court procedures are not intended to make you an expert nor is it intended to replace the service of an attorney. We hope that this booklet may be of some assistance to you if you choose to represent yourself in Small Claims Court. While you can expect courtesy from Court personnel, you cannot expect them to act as an attorney on your behalf.