

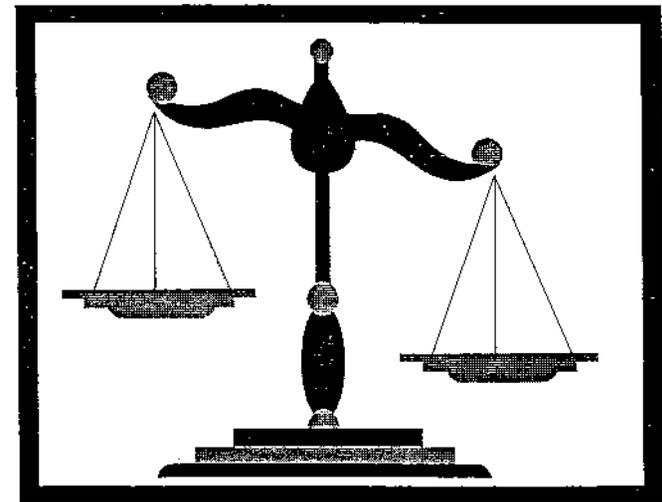
ing the defendant or other person to turn over money or personal property, for example, stocks, bonds and cash surrender of value of insurance policies. If the defendant does not appear at the hearing on the citation, you may request a Rule to Show Cause why the defendant should not be held in contempt. If the defendant does not appear in court after service of the Rule, the judge may issue a BODY ATTACHMENT for the defendant's arrest and set bail. When the defendant is brought into court, the judge will determine what further action should be taken. If assets of the defendant are discovered, the plaintiff may have the Sheriff levy on and sell the defendant's property or the court may direct a turn over of personal property for sale.

- B. A MEMORANDUM OF JUDGMENT may be recorded and will constitute an objection or lien on the title to any real estate owned by the defendant. This lien may be foreclosed on and the real estate sold to satisfy the judgment, subject to the rights of prior lienholders, such as mortgagees.
- C. A WAGE DEDUCTION summons may be sent to the defendant's employer which may result in an order requiring that a certain percentage of the defendant's wages be held back to pay the judgment. You must give notice to the defendant of this proceeding.
- D. A NON-WAGE GARNISHMENT summons may be directed to anyone owing money to or holding property of the defendant, for example, to a bank or other financial institution that holds an account of the defendant, to a person owing money to the defendant, or to an insurance company to obtain the cash surrender value of a life insurance policy on the life of the defendant. The garnishment may result in an order requiring the money owed to the defendant to be paid to the plaintiff in whole or in installments, as may be permitted, or requiring the turn over of property to the plaintiff to pay the judgment. You must give notice to the defendant of this proceeding.
- E. For more information about the several methods for collection of judgments go to a law library and see the following published by the Illinois Institute of Continuing Legal Education: *Creditors' Rights in Illinois* (2004), *Basic Enforcement of Judgments* (2006), and *Starting Points: The Fundamentals of Practice in Illinois*, Chapter 7, "Collections" (2005).
- F. OTHER SEARCH SERVICES. There are fee-based on-line research services that may assist in locating persons or determining their assets. Also, a private detective could be hired to do this search for a fee.

PRO SE HANDBOOK

HOW TO PROCEED IN SMALL CLAIMS COURT FOR CLAIMS UP TO \$10,000

IN THE SECOND MUNICIPAL DISTRICT



TIMOTHY C. EVANS, CHIEF JUDGE
CIRCUIT COURT OF COOK COUNTY
SHELLEY SUTKER-DERMER, PRESIDING JUDGE
SECOND MUNICIPAL DISTRICT
5600 OLD ORCHARD ROAD
SKOKIE, ILLINOIS

REVISED BY JUDGES IN THE SECOND MUNICIPAL DISTRICT

THE SMALL CLAIMS *PRO SE* COURT

The **Small Claims *Pro Se* Court** was created to efficiently resolve civil money claims for \$10,000.00 or less. The person who has a claim, the “plaintiff,” files a “complaint” to start the lawsuit. The person or entity being sued, the “defendant,” may defend against the claim.

This Handbook presents basic information to help both plaintiffs and defendants who wish to proceed without an attorney or *pro se* (pronounced “pro-say” — which means by or for yourself). If you need more information as to procedures and filing requirements, please call the Civil Clerk at 847/470-7250. The forms which are needed to bring or defend a claim may be obtained from the Clerk’s Office (Room 136). **If you need legal advice, please see an attorney.** A list of lawyer referral services is available in the Clerk’s Office or Courtroom 205. Illinois Supreme Court Rules 218 through 289, which deal with small claims, may be found in the Law Library, Room 200.

PRESENTING YOUR CLAIM

1. ***How does a plaintiff begin a lawsuit?***

A plaintiff must:

- A. File a complaint which states the plaintiff’s name, residence address, and telephone number; the defendant’s name and residence or business address; and a simple factual description of the claim, including dates and other relevant information. **If the claim is based on documents, for example, a contract, a lease, or a check, attach a copy of all relevant documents to the complaint.**
- B. Pay the filing fee (See Paragraph 7).
- C. Have the defendant served with the complaint and a summons to appear on a specific date (See Paragraph 6).

2. ***What kind of small claims may be filed?***

A plaintiff may bring money claims for \$10,000 or less, for example: claims for damages to a car; loss of, or damages to, clothes; return of a security deposit; payment of rent or monies due on a loan; or damages from improper repairs.

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19. ***What are the “court costs?”***

The court costs are the costs of filing and serving court documents, including the complaints, appearances and summonses. Keep your receipts as evidence of these court costs.

SETTLEMENT OF CLAIMS OR COLLECTION OF JUDGMENTS

20. ***Can anything be done for a defendant who owes money to a plaintiff but needs time to pay? Can a claim be settled before or after trial?***

- A. Yes is the answer to both questions.
- B. The parties may work out a plan to allow the defendant to pay the money in installments and are always free to settle the case.
- C. The parties may ask the judge to help reach a settlement or installment plan.
- D. If a defendant fails to make payments that are required under an installment plan and the case was dismissed without prejudice, the plaintiff may file a motion to reinstate the case against the defendant and obtain a monetary judgment against the defendant. If a judgment is entered against the defendant for money due, and the defendant and the plaintiff have the court enter an installment payment order, the failure by the defendant to comply with the installment order allows the plaintiff to vacate the installment order and to exercise his or her rights to collect the judgment as set forth in Paragraph 21 below.
- E. When a judgment or settlement is paid in full, the defendant should obtain a “Satisfaction Release of Judgment” from the plaintiff and file it with the Clerk’s Office in order to clear his or her credit record.

21. ***How is a Judgment collected?***

THE COURT DOES NOT COLLECT THE MONEY. The responsibility for that is on the plaintiff. The collection of a judgment under the appropriate rules requires additional costs, fees, time and patience. These additional costs and fees may be recovered by the plaintiff in addition to the judgment amount, the original court costs, and post-judgment interest. The principal steps which may be taken to collect a judgment are:

- A. A CITATION TO DISCOVER ASSETS may be issued and served on the defendant or other person. The citation may require the defendant or other persons to come into court and answer questions about the defendant’s assets. The court may order the defendant or other person to take action to satisfy the judgment, including order-

repair of the items that were damaged or for the purchase of replacements for the damaged items; or evidence of the value of the property before and after the time of the accident or other event.

The judge may conduct the trial in an informal way, relax the rules of evidence, and call any person present to testify. Do not argue with the judge or other party.

16. ***May the trial or status date be continued or postponed?***

If you cannot attend a scheduled court date because of an emergency (for example, hospitalization or illness, etc.), you should telephone or write to your opponent to explain that you will be asking for a continuance. All parties or someone for all parties should appear on the court date to explain that a continuance is necessary. The judge will then consider the request for a continuance.

Note: Continuances will not be granted by a telephone call to the Clerk or to the Courtroom.

17. ***What happens if you do not appear on a court date?***

If the plaintiff does not appear at status or trial date, the case may be dismissed. If the defendant does not appear on a court date, a default judgment may be entered in favor of the plaintiff. A default judgment is open to collection. The plaintiff should send a copy of the default judgment to the defendant. If the case is dismissed or a default judgment entered, a party may seek to file a motion to vacate the dismissal or default, to reinstate the case and have an immediate trial. This motion must be filed within 30 days of the dismissal or default; and the other party must be notified of the motion.

A DECISION

18. ***When is a case decided? When is a judgment entered?***

- A. After hearing the evidence, the judge will make a decision. The decision must be based on the law and proper evidence.
- B. When a case is decided in favor of the plaintiff, a judgment in a specific amount will be entered. The defendant will then have to pay the judgment plus any court costs allowed by the judge. If the defendant is not in court on the day judgment is entered, the plaintiff should promptly mail to the defendant a copy of the order entered by the court.
- C. If the case is decided for the defendant, judgment will be for the defendant and the judge may assess court costs against the plaintiff.

3. ***Who may sue as a plaintiff?***

- A. Any person 18 years or older may bring a suit.
- B. A parent may sue on behalf of a minor child.

4. ***Who may NOT sue as a plaintiff without an attorney?***

Partnerships, corporations, limited liability companies, professional corporations, associations and assignees of claims **may not sue without an attorney.**

5. ***Who may be sued as a defendant?***

Any person, corporation, partnership, limited liability company, professional corporation, association or trust may be sued. Where the claim exceeds \$10,000, a defendant corporation must be represented by an attorney. When the claim does not exceed \$10,000, a corporation may defend the claim through any officer, director, manager or supervisor of the corporation. An individual defendant may appear with or without an attorney.

6. ***How is a defendant served?***

- A. A defendant may be served by certified mail through the Clerk's Office or by personal service through the Sheriff's Office.
- B. For certified mail service, the Clerk will need an original and a copy of the summons and the complaint.
- C. For personal service, an original sealed summons and a copy of the complaint must be taken to the Sheriff's Office (Room 030).
- D. Service on a corporation must be on the Registered Agent or any officer or agent of the corporation. Call the Secretary of State, Business Services, for the Registered Agent's name and address — (312/793-3380).
- E. It is important for the plaintiff to know where the defendant can be sued. The plaintiff will be given four chances to serve process on the defendant.
- F. If the defendant is avoiding service of process, you should file a motion with an affidavit stating the attempts you made to serve process.

7. **How much does it cost to file and serve a lawsuit?**

- A. The fees for filing suits are:
 - \$119 to file claims up to \$250;
 - \$172 to file claims over \$250 to \$1,000;
 - \$177 to file claims over \$1,000 to \$2,500;
 - \$227 to file claims over \$2,500 to \$5,000;
 - \$247 to file claims over \$5,000 to \$15,000.
- B. For service by mail, the fee is \$12.30 plus the cost of mailing.
- C. For Sheriff service, the cost is \$60 plus mileage.
- D. If service is not made in time for the return date, then a second summons (alias summons) may be issued at an additional cost of \$6, plus the Sheriff's fees and/or the cost of certified mail.
Note: Fees and costs are subject to change.

RIGHTS AND OBLIGATIONS OF THE DEFENDANT

8. **What must a defendant do to contest the claim?**

- A. The defendant must file an appearance with the Clerk, as directed in the summons, and pay the filing fee.
- B. The defendant must appear in court for the status and trial dates. (See Paragraphs 16 & 17).
- C. To prepare a defense, the defendant should read the complaint and summons.

9. **Is a written answer required of a defendant?**

- A. When the claim is less than \$10,000, an answer is not required. At trial, you may state your defense, giving the facts and presenting evidence. (See Paragraph 15).
- B. If you believe that the plaintiff owes you money, you may file a counterclaim against the plaintiff.

10. **Can a jury hear the case?**

A plaintiff may make a jury demand at the time of the filing of the complaint. A defendant may make a jury demand by the appearance date. A party making a jury demand must pay additional fees.

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MEDIATION OR ARBITRATION

- 11. **Mediation:** If there is no jury demand, all cases are subject to mediation. Mediation is with a person trained to attempt to get the parties to agree on a settlement. If no settlement is made, the case will be set down for trial by the court.
- 12. **Arbitration:** If there is a jury demand, the case will go to arbitration. There is a handbook on arbitration that explains that process.

THE TRIAL

13. **When and where do you go to court for the trial?**

The Clerk will set an initial status date on a Monday, at 1:30 p.m. in **Courtroom 205**. Please make sure this date is included on the summons. If both sides are ready and the court's schedule allows, the case may go to trial on that date. If not tried on the initial status date, the court will set a trial date, may transfer the case to mandatory arbitration or send the case for mediation.

14. **What do you bring to court for the trial?**

For trial, you should bring:

- A. any person (witness) who has personal knowledge concerning your claim, defense or situation; and
- B. all relevant exhibits and papers, such as leases, contracts, receipts, letters, repair bills, estimates, canceled checks or photographs.

If the case is continued, bring all your material and witnesses with you on the continued date.

Note: In a small claims case, you cannot request that the other party participate in a deposition, answer interrogatories, or produce documents prior to trial except by permission of the court.

15. **What do you tell the Judge at trial?**

At trial, a party should:

- A. tell the judge the facts about the claim or defense;
- B. show the papers and other exhibits to the other side and if admitted, to the judge; and
- C. present evidence of damages by bringing to court paid bills for

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