

A CITIZEN'S GUIDE: SMALL CLAIMS COURT

Provided by the
Champaign County Bar Association

This Guide is intended to provide you with information you may need if you are suing or being sued in the Small Claims Court. This Guide is provided to help you through your Small Claims case. **IF YOU NEED LEGAL ADVICE OR HELP, CONSULT A LAWYER.** The last section of this Guide provides definitions for some of the court terms that may be unfamiliar to you.

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WHAT IS SMALL CLAIMS COURT? It is for cases where the amount sought is less than \$10,000.00. Examples of typical cases are back rent, contract debts, car accident claims and loans. It can include any case where the Defendant owes money to the Plaintiff and has refused to pay and the amount claimed is less than \$10,000.00.

A claim for eviction - called a forcible entry and detainer - is heard by the same Judge who hears Small Claims cases. Different procedures apply to these types of cases.

The person filing the claim is called the Plaintiff. The person defending the claim is called the Defendant.

WHO CAN FILE? Anyone who is 18 years of age or older can file. A parent or guardian can bring an action on behalf of a person under 18 years of age or a person who is mentally handicapped. A corporation must have an attorney bring suit. A corporation can defend itself without counsel in a Small Claims suit up to the jurisdictional limit (currently \$10,000.00).

SHOULD I FILE? A Small Claims case is a way to collect money. However, not everyone who owes money can be required to pay. Since actually collecting your money is your goal, before you file, you should consider the following:

- How much it will cost to file and pursue your case;
- How much time the case will take, along with the value of your time; and,
- How likely it is you can collect a judgment from the Defendant.

You should understand that, for a variety of reasons, you can "win" your case but not be able to collect your judgment. For example, many debts can be discharged in bankruptcy, or the Defendant's only assets may be legally protected.

HOW MUCH WILL IT COST TO FILE?

Effective December 1, 2009, filing fees are charged as follows:

0 to \$250.00	\$65.00
\$250.01 to \$500.00	\$75.00
\$500.01 to \$2,500.00	\$95.00
\$2,500.01 to \$10,000.00	\$130.00

An eviction for possession only or for possession and less than \$15,000 claimed, the filing fee is \$100.00. If claim is for \$15,000.00 or more, the filing fee is \$210.00. Evictions cases are numbered as "-LM-" cases, and are filed with the Clerk of the Circuit Court's office on the first floor of the Courthouse. ALL FEES PAID TO THE CIRCUIT CLERK MUST BE PAID AT THE TIME OF FILING AND SHOULD BE PAID BY CASH, A MONEY ORDER, OR A CERTIFIED CHECK (PERSONAL CHECKS ARE ACCEPTED, HOWEVER, YOU SHOULD ALSO INCLUDE AN ADDITIONAL PROCESSING FEE OF \$1.25).

HOW DO I FILE? You must go to the Champaign County Circuit Clerk's Office on the first floor of the Champaign County Courthouse at 101 East Main Street, Urbana, Illinois (Telephone: (217) 384-3860). You will need a Complaint and a Summons for the Defendant (person being sued). (A sworn Complaint may simplify some later proceedings). These forms are available at the Clerk of the Circuit Court's office.

IS AN ATTORNEY REQUIRED? No, individuals do not have to have an attorney in a Small Claims case. However, one person can not appear for another person (Examples: a mother can not appear for her adult child; a partner can not appear for another member of the partnership). One spouse can not appear for the other spouse except under limited circumstances. Examples of when one spouse may appear for the other are: If a husband and wife are sued together, either may defend in his or her own right and, if either neglects to defend, the other may defend for both (750 ILCS 6512); and, if one

spouse deserts the other, the abandoned spouse may prosecute or defend any action in the name of the deserting spouse which the deserting spouse could prosecute or defend (750 ILCS 65/3). A corporation must have an attorney file a suit but may defend by an officer without an attorney. A person who represents himself/herself is called a pro se person.

DO I NEED LEGAL ADVICE? Court personnel (including the Judge, Court Clerk, Court Security Officers and the Circuit Clerk) are PROHIBITED BY LAW from giving individuals any legal advice or suggestions as to what to do with your case. You have the right to hire an attorney at any time during the proceedings. The Land of Lincoln Legal Assistance Foundation (Telephone: (217) 356-1351) may provide advice to *people whose income is within 125% of the federal guidelines for poverty* and the Legal Clinic of the University of Illinois College of Law (Telephone: (217) 244-9494) may also provide legal advice.

WHAT ARE THE PROCEDURES FOR FILING A COMPLAINT? If your Complaint is based upon a written agreement (Examples: loans, agreement, contract), A COPY OF THE WRITTEN AGREEMENT MUST BE ATTACHED TO EVERY COPY OF THE COMPLAINT. You will need at least three (3) COPIES OF THE COMPLAINT (an original for the Court file, one for each Defendant and one for you - the Plaintiff). Your case will be issued a case number from the Circuit Clerk. The Circuit Clerk will give you a first appearance date for you and the Defendant to come to Court at the same time.

You need to have the correct name and full address of the person you are suing. If you have a phone number for the Defendant, you should list it on your Summons. You must have your Summons served upon the person you are suing or upon that person's agent as required by law. Summons may only be served by the Sheriff's Office or a duly authorized private process server.

If you are suing a business, or other entity, you need to know whether the business is a sole proprietorship (one person ownership), a partnership, a corporation or a limited liability company. For a proprietorship or partnership, you must get the exact legal name of the owners or partners.

For a corporation, you must serve the corporation's registered agent (the person whom the corporation has designated as its person to accept service of a Court Summons) or an officer of the

corporation. You can check for the Corporate name in the book called "Certified List of Domestic and Foreign Corporations". A copy of the book is available for viewing at the County Recorder of Deeds Office at 1776 East Washington Street, Urbana, Illinois. You can purchase that book from the Illinois Secretary of State's Corporation Division. You can also call the Secretary of State's Office (Telephone: (217) 782-7080) to get information on the correct legal name of a corporation and the registered agent.

If the entity to be sued is a limited liability company, you will need to get all the specifics of the status of ownership to properly file your Complaint.

WHAT CAN I DO IF I CANNOT AFFORD THE FILING FEE? If you cannot afford the filing fee, you must apply for a fee waiver. You can get this form from the Circuit Clerk, who will tell you that the form must be sent to the Judge for approval. It is the Judge's decision whether to approve your waiver or not. The Clerk cannot tell you whether or not it will be approved. If your fee waiver is approved, your filing fee, as well as your service fee from the Sheriff, will be waived. If you are the Defendant (the party being sued), you may be required to pay an "Answer" fee and you may also ask the Judge to waive your fees. You must also fill out a waiver form and it is up to the Judge to decide if you qualify. Even if fees are waived, if there is a judgment entered against the Defendant, that person can be required to pay all fees previously waived.

CAN I HAVE A JURY TRIAL? Yes. You can request a jury trial for an additional fee, (\$25.00 for a twelve (12) person jury and \$12.50 for a six (6) person jury). The Plaintiff must request a jury trial at the time when the claim is filed. The Defendant must request the jury by the date that he/she is required to appear for the first time.

WHAT MUST BE IN THE COMPLAINT? Your Complaint must state a short simple statement as to why you are owed money by the Defendant. If you wish a jury trial, you must ask for it when you file your Complaint and you must pay the additional jury fee.

WHAT IS SERVICE OF SUMMONS? If you are suing more than one person you will need a copy of the Complaint and a Summons for each Defendant. If the party you are suing lives outside of Champaign County, service of Summons must be handled by the Sheriff of the County where the Defendant lives. You will have to contact that County and find out what it will cost for service, how many copies of the Complaint and Summons they will

need, and how long it will take to get service. If your fees have been waived in Champaign County, they are also waived in other Counties for the same case.

If you are suing for money, you must have the Summons signed by the Circuit Clerk at least fourteen (14) days in advance of the Court appearance date. If you are suing for eviction, you must have your Summons signed by the Circuit Clerk at least seven (7) days before the first Court date. A person must be served at least three (3) full days before the Court appearance date. The Summons may also be served by a private detective or by certified mail. The Summons requires a Court date within fourteen (14) to forty (40) days after its issuance. **YOU MUST HAVE SERVICE ON A DEFENDANT BEFORE YOU CAN GET A MONEY JUDGMENT AGAINST THAT PERSON.**

The Circuit Clerk will give you a case number — please write it down for future reference. The Circuit Clerk will schedule your "First Appearance" (Court date). This is the date when all parties to the suit must appear before the Judge for the first time. If you are suing for possession of property (eviction), your first appearance date will typically be scheduled 3 to 6 weeks after the case is filed. If your suit is for money only, the first appearance date can be 4 to 12 weeks from the date you filed the suit. This time frame varies according to the availability of the Court.

After a Defendant has been served with a Summons, the Defendant can notify the Clerk of the Circuit Court **IN WRITING** at least seven (7) days prior to the Court appearance that he/she wishes to contest the claim. The Defendant must state his/her name, address, telephone number and the reasons he/she is contesting the claim (and provide a copy of this document to the Plaintiff or the attorney listed on the Complaint). The Defendant who does this does not have to appear at the first appearance date. The Defendant will be sent a Notice of the trial date. The Defendant has a right to file a counterclaim and if that is done, the Plaintiff must be properly served as to the counterclaim. The Defendant should mail the Plaintiff or the attorney listed on the Complaint a copy of the counterclaim.

COURT PROCEEDINGS;

The Judge must be fair to both parties in the case and can discuss the case only when both parties are present before the Court. The Judge cannot discuss

the case with you either before the hearing or trial or after a decision has been made.

Both the Plaintiff and Defendant should personally appear for trial. If you are a party to the lawsuit, you must appear unless you have a lawyer appear for you. Only a lawyer can appear for another party, except a corporation may appear as a Defendant in Small Claims Court by an officer, director or manager. One spouse cannot appear for the other spouse, except as discussed previously herein under the heading "IS AN ATTORNEY REQUIRED?", and a parent or non-attorney friend cannot appear for you unless you are an unemancipated minor, in which case your parent or guardian or an attorney must appear for you.

At the first appearance the Defendant may either admit that he/she owes the money or the Defendant can deny the Complaint. If the Defendant denies the Complaint, the case will be set for trial. If the Defendant admits, a judgment in favor of the Plaintiff and against the Defendant will be entered. If the Defendant has been served with a Summons and fails to appear on the court date, a default judgment may be entered against the Defendant. If the Plaintiff fails to appear on the first appearance date, the case can be dismissed.

If the case is set over for trial, both parties must be prepared to present their witnesses and evidence on that date. Each witness must testify from his or her own personal knowledge. One witness cannot testify for another witness.

Remember, you can always try to settle your claim at any time before your Court date. Any negotiations cannot, however, be used as evidence at trial. Once again, if you settle your claim, get it in writing. Be sure that your written settlement specifically states all the terms of the agreement, such as immediate payment of the full amount requested or a payment agreement over time. Any payment order must state a specific payment date and amount. The Circuit Clerk has "Payment Orders" that you can use as a guide for use as your settlement document.

DOCKET CALL: The Court will set certain cases which are not ready for a trial for a Docket Call (sometimes called "Status Call") date. The Court will review the status of the case at that hearing. Each party must appear and answer the Court's questions. If the Plaintiff fails to appear, the case can be dismissed. If the Defendant fails to appear, a default judgment can be entered against him/her.

TRIAL: Have all your witnesses and any papers, records or photographs that you want the Judge to see, with you in Court. If you want the have a witness testify and that person will not voluntarily appear, you must serve the witness with a Subpoena and you will be required to pay a witness fee and mileage costs for the witness' appearance. Subpoenas are issued by the office of the Clerk of the Circuit Court.

Each claim made in the case must be proven to the Court by a "preponderance of the evidence" (or by the greater weight of the evidence). The Plaintiff has the burden to present evidence first. Regardless of whether or not lawyers are involved for either party, the Judge is still required to follow the Rules of Evidence. The burden or responsibility to present evidence is on the Plaintiff to prove all claims made in the Complaint. The burden is on the Defendant to prove any counterclaims filed by the Defendant. For instance, the Plaintiff should be able to prove any automobile damages claimed by showing a paid bill. (An estimate alone is not enough). The Plaintiff must have testimony from a witness who personally knows the specific damage and exact amount paid to repair it or be able to present testimony from an expert as to what the cost of repairs would be. Two important points to remember: (1) an affidavit by a witness who is not present in Court to testify cannot be considered as evidence; and (2) the Court will not consider "hearsay" evidence, which includes any statement made by a witness who is not present in Court to be cross-examined.

The Court might take an opening statement from each side before the witnesses start testifying. The Plaintiff (person bringing the suit) begins by calling the first witness to the stand. The Judge or Court Clerk will swear in the witness. The Plaintiff then questions the witness by having the witness state his/her name and his/her knowledge of the events. This is called "direct examination". Plaintiff can also testify as a witness on his/her own behalf. If the Defendant asks the witness questions, it is called "cross examination". Both the Plaintiff and the Defendant can testify at this trial. Both

the Plaintiff and the Defendant have a right to call witnesses or even call each other as witnesses.

At the conclusion of the case, the Judge may let the parties give a closing statement. The Judge will then rule on the case or take the matter under advisement. If the Court rules, there will be either (1) a judgment for the Plaintiff which means that the Defendant will owe the Plaintiff money, or (2) a judgment for the Defendant. If the Court takes the matter under advisement, a written Notice of the Court's ruling will be sent to all parties.

The losing party owes all Court costs including the filing fee and the cost of the service of the Summons. If the Defendant gets a judgment against him/her and does not voluntarily pay the judgment, the Plaintiff can enforce the judgment — see *A Citizen's Guide: YOUR RIGHTS AFTER A SMALL CLAIMS JUDGMENT*. The costs of a proceeding do not include your lost wages for appearing in Court, your travel expenses or any telephone expenses. If you hired an attorney, a party might be required to pay for the services if the underlying contract or statute allowed for attorney fees.

If the judgment is paid off or if the case is settled, the PLAINTIFF must "close" the case. The Plaintiff closes the case by signing closing forms, which can be obtained at the Clerk of the Circuit Court's Office. The Plaintiff must be sure to close the case. If the case is not properly closed, the Plaintiff may be held liable for money damages to the Defendant for impairing the Defendant's credit standing, even though the Plaintiff won the case.

After a judgment is entered, the parties have thirty (30) days to file a written Motion to Reconsider the Court's prior judgment. The law also allows for a Notice of Appeal to be filed within thirty (30) days of the judgment.

MISCELLANEOUS MATTERS:

A. COMMON SMALL CLAIMS ERRORS: When the Plaintiff fails to appear, the case is dismissed. Plaintiffs who miss their Court date will have to re-file or present a Motion to Reinstate that shows the Court GOOD CAUSE as to why Plaintiff missed the assigned date. These Motions are not normally allowed by the Court if filed more than thirty (30) days from the dismissal date. All these things will require the Plaintiff to spend more money and time trying to resolve the claim. Defendants who fail to appear in Court will be subject to a default judgment against them and never have the opportunity to present their side. If a Defendant misses the first appearance date

and there is a default judgment entered against him/her, the Defendant can file a "Motion to Set Aside Default". That Motion must be filed within thirty (30) days after the date the judgment was entered by the Court. After more than thirty (30) days have passed, a Section 2-1401 Petition must be filed. The preparation and filing of such a Petition and the accompanying Affidavit that is usually required will almost certainly require the assistance of any attorney.

A Section 2-1401 Petition is a specialized procedure provided for in Section 2-1411 of the Illinois Code of Civil Procedure, and must be filed within two years after the entry of a judgment sought to be changed. (A Judgment that is void because the Court has no jurisdiction over the Defendant or the subject matter of the litigation may be the subject of a Petition at any time). The function of a Section 2-1401 Petition is to bring to the Court's attention errors of fact which, if known, would have prevented the judgment from being entered or to reveal errors of law that are apparent when looking at the judgment itself. A Section 2-1401 Petition is not to be used to put a factual question into issue that had been previously decided by the Court or jury. Some of the matters that may be the subject of a Section 2-1401 Petition are: errors by the Clerk of the Court that are prejudicial, legal or mental disability of a party, death of a party, previously unknown fraud, duress, excusable mistake or ignorance that is not the fault of the Petitioner. A Section 2-1401 Petition must be in writing and must allege facts entitling the Petitioner to the relief sought, must include facts showing due diligence and a description of the judgment in question. Specific facts must be included that support each of the following elements: (1) the existence of a meritorious defense or claim, (2) due diligence in presenting the claim or defense in the original case, (3) that Petitioner was not guilty of any fault or neglect in not presenting a valid defense or claim or pointing out an error of fact at the time the judgment was entered, and (4) Petitioner exercised due diligence in filing the Section 2-1401 Petition.

Unless the facts upon which the Section 2-1401 Petition are based are completely contained in the record, Petitioner must file a supporting Affidavit along with the Petition. The Affidavit must state facts to support the grounds of the Petition, show due diligence or circumstances excusing unreasonable delay, and the existence of a meritorious defense. The Affidavit must be sworn or certified and signed by the Petitioner.

The Petition and Affidavit must be served upon the other parties to the case by any of the

following methods: (1) the same as if they were a Summons and Complaint, (2) by pre-paid certified or registered mail, return receipt requested, delivery restricted to addressee only, and (3) by publication after the filing of an Affidavit required by the Rules for Publication of Notice of the Pendency of a Suit. Service by mail is not complete until the Petition and Affidavit are actually received by the addressee, but a registered receipt is *prima facie* evidence of service.

B. CHECK THE STATUTE OF LIMITATIONS: As a general rule, you have ten (10) years to sue on a written contract and five (5) years to sue for an oral contract. However, shorter periods of limitation may apply. Overlooking the Statute of Limitations is an easy way to get your claim dismissed by the Defendant. Other periods of limitations may apply to both written and oral contracts. A Statute of Limitations may be an affirmative defense to a claim. This is a very technical area of the law. YOU SHOULD GET LEGAL ADVICE ON THIS ISSUE.

C. EVICTION: If you are a landlord suing to evict a tenant, your Complaint must specifically ask that the Court award you possession of the premises. You may be required to give the tenant of the property legal notice to vacate the premise. The Forcible Entry and Detainer cases (commonly called eviction cases) are governed by rules that can become very complicated. You always have a right to consult with an attorney about these matters.

D. ADDRESS: Keep the Clerk of the Circuit Court notified of any address changes if you owe on a judgment or if you are still collecting on a judgment. It is not uncommon for a Defendant to suddenly decide to pay the outstanding unpaid judgment months or even years later in order to have the outstanding unpaid judgment removed from his or her credit report. If the Clerk of the Circuit Court does not have your address, its Clerks cannot tell the other party where to send the payments. The Plaintiff who has a judgment can also bring the case back to Court to collect the judgment. Notice would be sent to the last address on file. If you do not appear the Judge may issue a Body Attachment, which is a civil warrant for your arrest.

DEFINITIONS:

Affidavit: A written statement made by a person who swears the statement to be true. If that person says something in the Affidavit knowing that it is false, that person is guilty of perjury.

Complaint: A paper that tells the Defendant that the Plaintiff has filed a lawsuit against him or her, why he/she is being sued, and how much money Plaintiff claims he/she owes.

Costs: Fees that the County charges for filing the lawsuit and serving the Summons and Complaint. If you ask for a jury trial, you will also have to pay a jury fee.

Default Judgment: A Judgment entered by the Court against a party who does not show up at the first appearance or at a later hearing or at trial. If this happens, the Court can decide that case for the party who is present in Court if that party proves his/her case.

Judgment: A Court Order that decides the case. The Judgment will either dismiss the case or set the amount of money one side owes the other.

Plaintiff/Defendant: The person who is suing is called the Plaintiff and the person who is being sued is called the Defendant. They are parties to the lawsuit.

Service (Service of Process): The way the Defendant receives the Complaint and Summons. These papers will be delivered to (served on) the Defendant by certified mail, hand-delivered by the Sheriff's Office or a licensed private detective.

Settlement: An agreement that the parties make to resolve a claim so there will be no trial on the Complaint.

Subpoena: A paper that tells a person to come to Court as a witness. A subpoena is like a Court Order; the witness who receives the subpoena and the required witness fee must show up in Court.

Summons: A paper that tells the Defendant that he or she must appear before the Court and gives the time and place to appear. If you fail to appear, a default judgment can be entered against you.

DISCLAIMER:

Every effort has been made to have correct information in this pamphlet. However, this Guide is not a substitute for legal advice. The Champaign County Judiciary, the Champaign County Bar Association and the Clerk of the Circuit Court do not assume any liability arising out of the use of this Guide. This pamphlet is based upon statutes, Court Rules and the case law in effect on January 1, 2006. Legal rights and procedures may change with the passage of time.

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