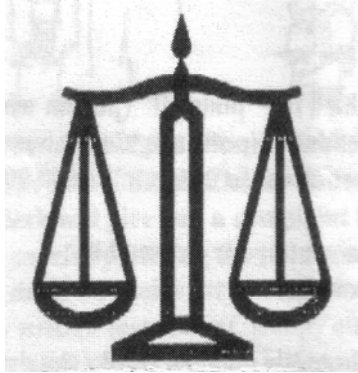


**CITIZENS GUIDE
TO**

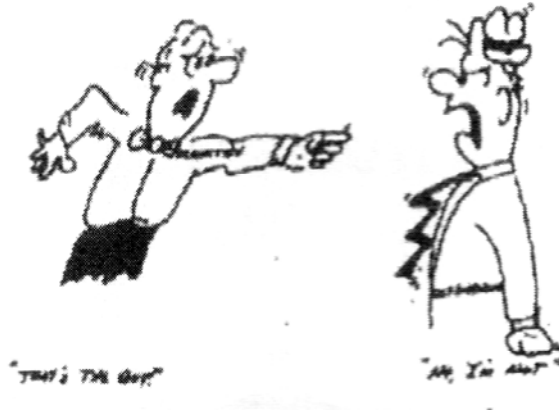


**SMALL CLAIMS
COURT**

**PREPARED BY
THE CIRCUIT COURT OF THE
EIGHTH JUDICIAL CIRCUIT
OF ILLINOIS**

**ADAMS, BROWN, CALHOUN, CASS,
MASON, MENARD, PIKE
AND SCHUYLER COUNTIES**

What is a Small Claims Case?



A case in which the “plaintiff” (person who starts the case) sues the “defendant” (person against whom the claim is made) for an amount not in excess of \$5,000.00.

This may be for:

1. Damages to you automobile
2. Back wages
3. Rent

or for any claim where the plaintiff thinks the defendant owes him less than \$5,000.00 and plaintiff claims the defendant refuses to pay.

Should I hire an attorney?

You do not have to have an attorney represent you unless you are a plaintiff who is a corporation. You can bring or defend the case yourself. However, attorneys have had years of training in the law. If an attorney represents the other side the Court cannot and will not act as your attorney. The Court will not discriminate against a person who has the foresight to hire an attorney who knows the law and rules of evidence. If the amount of money at stake is important to you, you would be well advised to at least discuss your case with an attorney before proceeding. Most attorneys will meet with you for an initial consultation without charge.

An attorney must represent any corporation filing a Small Claims Case. A corporation may defend itself in a Small Claims Case by any one of its authorized agents.

How do I start a Small Claims Case?



1. Go to the office of the Circuit Clerk, at your courthouse, and ask the Clerk for a Small Claims form.
2. The Clerk will give you a complaint form. You should fill out this form carefully, starting the nature and amount of you claim, giving dates and relevant information. If the claim is based upon a written instrument, a copy of that document must be attached to all copies of the complaint, unless the instrument is unavailable to the plaintiff. The form should then be returned to the Clerk, who will give the case a file number and fix an “appearance date” (the time and date when both plaintiff and defendant will first appear in court) on the summons. You will be expected to pay the filing fee (and jury fee if you demand a jury trial) at the time you file you case. There is no additional cost for having a trial before a Judge. If you desire a jury trial, request a “Jury Demand” form from the Clerk of the Court, sign the same and tender to the Clerk the jury fees requested at that time.
3. The Clerk will give you a Summons, and if the defendant resides in your County, service can be made upon the defendant by certified mail, or by the Sheriff’s office, whichever you choose. If the defendant resides outside you County, the Sheriff of the County where the defendant resides must make service upon the defendant.
- 4.(a) If you wish the summons served by the Sheriff upon a defendant residing in your County, take the Summons to the Sheriff in you County and inform the Sheriff where it may be served on the defendant. The Sheriff will charge a fee and may require payment of this fee in advance. If the summons is served by the Sheriff, it must be paid for and in the Court file on the date of the Court Appearance.



4.(b) For service upon a defendant residing in another County, take or mail the Summons to the Sheriff of the County where the defendant resides and inform the Sheriff where it may be served on the defendant. The advance fee requirement is the same.

The Judge cannot discuss the case with you prior to the trial, nor will the Judge discuss it after the decision has been made. BOTH THE JUDGE AND THE CURCIUT CLERK ARE PROHIBITED FROM GIVING LEGAL ADVICE ABOUT THE CASE.

Can I have a jury trial?

Yes. The person asking for the jury trial must pay a jury fee. If you do not have a lawyer, you will be expected to handle your own case before the jury in much the same way as a lawyer would handle it for you, including preparations of jury instructions.

This book outlines the requirements to be met by a lawyer or by you, if you handle the case yourself.

What do I do when I get to Court



1. If the Sheriff has served the Summons, and the defendant does not appear, or if he or she does appear and states that he or she owes the amount, then the judge will give the plaintiff a “judgment” (a decision and order by the Court that the defendant owes the plaintiff the amount he or she is claiming).
2. If the defendant denies he owes the claim, the case usually will be set for trial on a later date.
3. At the time of the trial you should have with you in court all your witnesses and any papers, records, photographs or other items (these are called exhibits) you want the judge to see.
4. At the beginning of the trial, first the plaintiff, then the defendant, may make an “opening statement” (a short statement of what they think the evidence will show).
5. After opening statements, the plaintiff will call his or her witness to the witness stand. The Court will place the witness under oath, and the plaintiff will ask the witness questions on “direct examination” (questioning by the side calling the witness). The plaintiff may testify, and he or she can also require the defendant to testify.
6. After the plaintiff has questioned all of his or her witnesses and is finished with their side of the case, then the defendant calls all of their witnesses. The defendant has a right to testify, and can also require the plaintiff to testify as a witness.

(a) Remember that the testimony of the witnesses should be in great detail. Your first question will be to ask the witness his or her name and address. You know what happened; the Judge does not. Even though you have a good case, you may lose unless you can relate to the Judge what actually happened. It may help to write out the questions you plan to ask your witness before the trial.

7. After each witness has completed his or her testimony on direct examination, they may be “cross-examined” by the other side.

(a) Cross-examination is questioning a witness to see if he or she knows what they are talking about and if they are telling the truth.

(b) When you cross-examine a witness you should not argue with them or make a statement about their testimony, but only question them about what they have previously testified to on direct-examination. Taking notes during the direct-examination of a witness may later help you during your cross-examination of that witness.

8. After the Court has heard all the witnesses, first the plaintiff, then the defendant, may make a “closing statement” (each side sums up his case and tells the Judge what they think the evidence proved).

9. The plaintiff must prove his or her case by the “greater weight of the evidence” if the plaintiff is to win the case. Also, even though lawyers are not involved in the case, the Judge is still required to follow the Rules of Evidence. For example, in order for the plaintiff to prove their damages, they must either show a paid bill (an estimate is not enough) or have testimony from a witness who can testify as to the specific damage and exact amount.

What happens after the trial is over?



1. After the Court has heard all the evidence and closing arguments, the Judge will make his decisions and enter judgment for the plaintiff or defendant. The losing side pays all court costs and has a right to appeal.
2. If the judgment is for the defendant, the case will be dismissed.
3. If the judgment is for the plaintiff, the defendant should arrange to pay the plaintiff the amount of the judgment, including court costs. Installment payments maybe agreed upon to by the parties and included in the court order.
4. If the defendant fails or refuses to pay the judgment there are several alternatives for enforcing the judgment.
 - (a) A memorandum of the judgment may be filed with the Recorder of Deeds, creating a lien on any real estate the defendant may own.
 - (b) If the defendant is employed, an affidavit for wage deduction summons may be filed with the Circuit Clerk.
 - (c) You may go to the office of the Circuit Clerk and fill out the forms for a citation to discover the assets of the defendant. There is a fee for the issuance of the citation, and for its service on the defendant. Both parties must appear at the citation hearing. At the citation hearing, the Court determines the defendant's ability to pay. At the citation hearing you must conduct your own questioning of the defendant; the Court cannot help you with it.
5. It may be advisable to employ an attorney if the defendant does not pay, as these steps to enforce a judgment are complicated, especially the procedure to collect by wage deduction.

Eighth Judicial Circuit Judges

Chief Judge

Diane Lajoski

Circuit Judges

Robert Adrian

Mark A Drummond

Bob Hardwick Jr.

William O. Mays

Michael Atterberry

Alan D. Tucker

Charles Burch

Scott Butler

Frank McCartney

Scott Walden

Associate Judges

Chet W. Vahle

John C. Wooleyhan

Thomas Brannan

Jerry Hooker

Debra WellBorn