

SMALL CLAIMS MANUAL



The following information has been made available through the office of Vernon W. Kays, Jr., Clerk of the Circuit Court. It has been compiled through the cooperation of the Judges of McHenry County and the Civil Practice Committee of the McHenry County Bar Association. The purpose of this Manual is to assist parties appearing in small claims actions (i.e. actions seeking monetary damages less than \$5,000.00) who are not represented by an attorney.

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The information contained in this pamphlet is for informational purposes only. Though this Manual is designed to assist you if you decide to proceed on your own without an attorney, this Manual is not intended to be a substitute for an attorney or for legal advice.

1. GENERAL

The rules relating to small claims actions are set forth in Rules 281 through 289 of the Rules of the Illinois Supreme Court. Copies of these Rules are available in the Law Library at the McHenry County Government Center or on the Internet at <http://www.state.il.us/court/SupremeCourt/Rules/default.htm> . These Rules are designed to enable an individual to collect a debt or settle any small legal controversy involving money without having to go through a long, more expensive legal process as is associated with more substantial legal claims. INDIVIDUALS WHO WISH TO PROCEED UNDER THESE RULES WITHOUT BENEFIT OF LEGAL COUNSEL MUST REALIZE THAT CERTAIN RESPONSIBILITIES REST WITH THEM, AND SUCH INDIVIDUALS ARE WELL ADVISED TO LEARN THESE RULES.

A “small claim” action is defined as an action where less than five thousand dollars in monetary damages is sought. THE INFORMATION CONTAINED IN THIS MANUAL PERTAINS ONLY TO SUCH SMALL CLAIMS.

2. FILING THE ACTION

To file a small claims complaint, the plaintiff must pay a filing fee (the amount of which varies from case to case) and file a short-form complaint that sets forth the following:

A. The plaintiff’s correct name, address and phone number (if he or she has a phone) and the defendant’s correct name, address and phone number (if known). It is essential that the correct legal names of the parties be set forth in the complaint. If the correct names are not provided in the complaint the suit can be dismissed, an uncollectible judgment may be entered, or a judgment may be entered against a nonexistent person or entity.

A party to a civil action must fall into one of three classes. First, he or she may be an individual or an individual doing business under an assumed name (i.e. Jane Doe d/b/a Jane’s Accounting). Second, the party may be a partnership of two or more individuals acting together in business (i.e. Jane and John’s Accounting). Third, the party may be a corporation (i.e. Jane’s Accounting, Inc.).

B. Either the defendant's correct address or place of employment must be provided. The Sheriff cannot serve a Summons on a party if that party's whereabouts are unknown; and until Summons has been served, the Judge cannot schedule a trial or enter a judgment in the action.

C. The nature and amount of the plaintiff's claim should be clearly and legibly written. Relevant dates and parties should be given and, if the claim is based on a written instrument or contract, a copy of such writing should be attached to the complaint.

D. No corporation may appear as a claimant, subrogee or counter-claimant in a small claim proceeding unless such corporation is represented by counsel. However, where they are the defendants, corporations may defend any small claims action through such corporation's officer, director, manager, department manager or supervisor. An "officer" of the corporation is defined as the president, vice-president, registered agent or other person vested with the responsibility of managing the affairs of the corporation.

E. The Complaint can be either verified or non-verified. To verify a Complaint, include a verification statement at the end of the Complaint. The plaintiff should sign the verification statement. The reason for verifying a Complaint is addressed in Paragraph 4, below.

3. SUMMONS

The Summons may be personally served on the defendant or, in the case of a corporate defendant, on the proper registered agent or officer of the corporation. The Summons will be issued by the Clerk of the Circuit Court. It is the plaintiff's responsibility to arrange for service of the Summons (typically by the Sheriff of McHenry County) and to pay any fees associated with service of the Summons.

Alternatively, at the request of the plaintiff and in lieu of personal service, the Summons may be served via certified mail, return receipt requested. Service via certified mail is ONLY permitted if the defendant so served resides in the State of Illinois and, if the defendant being so served is an individual, the certified mailing must be sent on a restricted delivery basis to such individual. Service via certified mail may be accomplished by depositing with the Clerk of the Circuit Court (1) a mailing fee for each defendant to be served, (2) the original and one copy of the Summons for each defendant, and (3) an affidavit setting forth each defendant's last known mailing address. If the defendant refuses to accept the certified mailing, the plaintiff may be forced to request that another Summons, called an Alias Summons, be issued and personally served upon the defendant in the manner described above.

4. RETURN DATE

The Summons directs the defendant to appear in court by a specific hour on a specific date, which is called the “return date.” If the defendant has been properly served with a Summons, but does not appear on the return date, the plaintiff may request that the Judge enter a default order and judgment against the defendant. If the complaint was verified (i.e. if the plaintiff, under oath, attested to the truthfulness of the complaint and the complaint so notes such attestation), the plaintiff may request a judgment for the amount requested in the complaint plus costs of court. If the complaint was not verified, the plaintiff should request the opportunity to testify under oath regarding the amount due and owing from the defendant. In the latter case, the Judge will specify the amount of the judgment against the defendant.

If the defendant has not been served with Summons at least three days before the return date, the plaintiff should request an Alias Summons be issued. If the Judge grants such request, the plaintiff should go to the Clerk of the Circuit Court and request the “Alias Summons,” which is then served in the same manner as the original Summons.

In any event, the plaintiff MUST appear on the return date or the Judge may dismiss the action.

5. TRIAL OF THE ACTION

If the defendant appears on the return date and indicates that he or she wishes to contest the claim, the matter MUST be set for a trial on a date to be set by order of the Judge. ALL PLAINTIFFS AND DEFENDANTS MUST APPEAR ON THE TRIAL DATE. If any such party fails to appear, judgment may be taken against him or her.

All cases will be tried by the Court (i.e. the Judge) unless a jury demand is filed by the plaintiff AT THE TIME HE OR SHE FILES THE COMPLAINT or by the defendant WHEN HE OR SHE FILES THE APPEARANCE. The party who demands a jury must pay a fee for the jury. Small claims juries are comprised of six jurors unless either party demands, and pays the higher fee for a 12-person jury.

Because of the complex procedural and evidentiary problems that may arise, it is very difficult for Judges in small claims actions to apply all of the strict, formal rules of trial procedure and evidence. This is particularly true where one or both of the parties are not represented by legal counsel. Therefore, keeping in mind the rules of trial procedure and evidence, Judges exercise their sound judicial discretion in the trial of any case before them.

Under Supreme Court Rule 286 and on a motion made by either party or by the Judge, the Judge may conduct the trial as an informal hearing. At such informal hearings, all relevant evidence is admissible and the Judge may relax the rules of procedure and of evidence. Also, the Judge may call any person present at the hearing to testify and may conduct or participate in the direct examination and cross-examination of any witness or party. At the conclusion, of the hearing, the Judge will render judgment and explain to all parties the reason for the judgment. Generally, all small claims trials where no attorney appears for either side will be conducted informally under Rule 286.

Regardless of whether the Judge grants a motion for an informal hearing, **DO NOT EXPECT THE JUDGE TO CONDUCT THE TRIAL FOR YOU**. If you do not have legal counsel, you are solely responsible for producing sufficient competent, admissible evidence to prove your case, and you should be ready to produce such evidence on the date the action is set for trial.

This Manual cannot cover the entire subject of competent, admissible evidence. However, a brief overview of the fundamentals often seen in small claims actions are as follows:

A. Rules of Evidence and Burden of Proof

In establishing the small claims procedures, the Illinois Supreme Court has attempted to meet the needs of individuals who have monetary claims in small amounts against others. The forms and procedures have been simplified as compared to forms and procedures in other branches of the Court. All forms are available in the office of the Clerk of the Circuit Court.

As noted above, all relevant evidence is admissible if the Judge grants a motion to conduct an informal hearing under Rule 286. However, if no such motion is made or if the Judge denies such a motion, then the plaintiff must strictly comply with the formal rules of evidence.

In a small claims action, as in all other actions, the individual making the claim (typically the plaintiff) has the burden of providing the Judge, at the time of trial, with sufficient admissible facts to establish that that person is entitled to a judgment in a specific amount. This is called the burden of proof. All plaintiffs should remember that the mere filing of a small claims complaint does not automatically entitle the plaintiff to a judgment against the defendant. Rather, the facts alleged in the complaint must be proved to the Judge at the time of trial.

B. Negligence Claims

For the plaintiff to prove that he or she is entitled to recover for damages caused to his or her property or person by another, Illinois law generally requires that he or she prove four elements. Briefly, those elements are:

1. First, that the other party has a legal duty to the plaintiff and has breached that duty. For example, in an automobile property damage claim, the plaintiff must prove that the other party had an obligation to stop at the stop sign, but the other party failed to do so.

2. Second, that the breach of duty by the other party caused the plaintiff to suffer damage. In the above example, the plaintiff would need to prove that the other party's failure to stop at the sign caused her car to hit the plaintiff's car.

3. Third, that the plaintiff suffered an actual loss or damage. Continuing with the above example, the plaintiff would need to prove that she has had to spend money (and show the amount of money spent) to repair the damage to her car.

4. Fourth, that the plaintiff's conduct did not contribute to cause the injury or damage for which the claim is made. Concluding the above example, if the intersection where the accident occurred was a 4-way stop, the plaintiff must show that she stopped as required and, thus, did not contribute to the accident.

C. Written Contracts, Notes, and Other Documents and Exhibits

If the plaintiff's claim is based on a written contract or other written document, a copy of such contract or document must be attached to the complaint.

At trial, the plaintiff should bring, and attempt to present to the Judge, all tangible items that may have some bearing on the case. Such tangible items may include bills, estimates, letters, leases, photographs, and any other written documents.

D. Repair Bills and Estimates

At trial, the plaintiff should bring, and attempt to present to the Judge, any written repair bills or written repair estimates that may show any damages being claimed and sought. An itemized, paid repair bill (i.e. a written bill that has been marked on its face as having been paid) is normally admissible into evidence to establish that the repair work was done and that the amount charged was reasonable. If there is no paid repair bill, or where there is only an estimate of the cost of repairs (either written or oral), the party who performed the repairs or who gave the

estimate must normally testify before the Judge regarding such matters before the Judge will consider any estimates or unpaid repair bills.

E. Subpoenas for Witnesses

Each party has the right to present to the Judge the testimony of witnesses other than the parties to the action. Normally, the Judge cannot consider or accept the testimony of a witness who is not personally present in the courtroom. Thus, neither letters nor notarized statements are admissible evidence.

Each party has the right to require witnesses to appear in Court to testify before the Judge. For this purpose, each party may request the Clerk of the Circuit Court to issue a subpoena against any such witness. The subpoena must then be served upon the witness either personally or by certified mail, return receipt requested. The party requesting the subpoena must also pay the witness a statutory witness fee of \$20.00 plus the statutory mileage fee of \$0.20 per mile for each mile from the witness's home to the courthouse and back. These fees must be paid to the witness when such witness is served with the subpoena.

G. Actual Trial or Conduct of the Hearing

The trial occurs on the date set by the Judge on the return date or on a later date if either party is granted a continuance by the Judge. Both parties appear before the Judge (or jury), and the plaintiff commences the trial by making a short statement of the nature of the case and what she expects her evidence to prove. The defendant then has an opportunity to also make a short statement about the nature of the case and what she expects her evidence to prove. After these short, opening statements, the witnesses are sworn and individually examined. After each witness testifies, the opposing party may cross-examine the witness as to any information to which the witness has already testified. DO NOT ARGUE with the witness on cross-examination; rather, ask questions material and relevant to the witness's prior testimony.

After both parties have presented their witnesses and evidence, each is given an opportunity to present a short argument or summary of the evidence. This closing argument should focus on why the Judge should find in such party's favor.

When both parties have concluded their closing arguments, the Judge will render a decision from the bench. All judges reach their decisions by applying the law to the facts presented during the trial. THE JUDGE MAY ONLY CONSIDER THE FACTS INTRODUCED INTO EVIDENCE AT THE TRIAL. When the decision is

given, the Judge will explain the reasons for the decision to both parties. The Judge's decision is final on the trial court level. However, either party may appeal the judgment to the Appellate Court of Illinois by following the prescribed appeal procedures set forth in the Supreme Court Rules.

H. Judgments and Collections

When a decision is made, the Judge enters judgment for either the plaintiff or the defendant, specifies what amount, if any, is due, and assesses court costs. Once that judgment is entered, the party receiving the judgment (called the judgment creditor or creditor) is responsible to take necessary steps to enforce the judgment. Neither the Judge, the Clerk of the Court, or the Sheriff of McHenry County will attempt to collect the judgment if the losing party (called the judgment debtor or debtor) refuses to pay. However, there are several common procedures that judgment creditors may use in trying to collect the judgment. Those methods are:

1. Wage Deduction Summons. This is a Summons issued by the Clerk of the Circuit Court on request by the judgment creditor. The order is served on the judgment debtor's employer in the same manner as the Summons was served. Once served on the employer, a percentage (normally 15%) of the debtor's wages must be withheld until the amount of the judgment, including court costs and accrued interest, has been paid in full. However, prior to filing the wage deduction order, the creditor should insure that the judgment debtor is employed and that there are no other wage deduction orders filed against the debtor's wages. If the debtor is not employed, or if there are pre-existing wage deduction orders, it is useless to file.

2. Citation to Discover Assets - Third Party. If the judgment creditor knows of any third party who owes or holds funds due the debtor (such as bank accounts, money owed for labor, and the like), the creditor may serve a Citation to Discover Assets - Third Party on such third party. Upon service of such Citation, the third party must hold the funds until the Judge determines in an order whether the funds should be turned over to the creditor.

3. Writs of Execution. If the creditor knows of any property owned by the debtor, the creditor may request that the Clerk of the Circuit Court issue to the Sheriff a writ of execution to attach and sell such property. However, the debtor's possession of the property is sometimes insufficient to warrant seizure by the Sheriff. For example, the property may have mortgages or liens against it or be in someone else's name, in which cases the writ would be useless.

4. Citation to Discover Assets. Citations to discover assets are a good way for creditor to discover what property and debts the debtor has. The Citation is a mandate of the Judge that the defendant appears before the Judge, be sworn, and tell the creditor under oath what assets the debtor has which may be used to satisfy the judgment.

5. Memorandum of Judgment. If the creditor believes the debtor is a homeowner, a Memorandum of Judgment can be prepared and recorded with the Recorder of Deeds in the county where such property is located. This proceeding places a lien on the debtor's property.

6. Order to Pay Judgment. In these proceedings, the debtor voluntarily enters into a payment arrangement with the creditor to pay the judgment, including court costs and interest, based on a specific timetable.

The majority of the above-given, post-judgment collection proceedings require a fee for the paperwork to be issued by the Clerk of the Court or recorded by the Recorder. The fee is usually based upon the amount of the judgment. A copy of the fee schedule can be obtained in the offices of the Clerk of the Court (www.mchenrycircuitclerk.org) or Recorder of Deeds, as the case may be. Additionally, the majority of these procedures require a service fee (typically to the Sheriff of McHenry County) for the paperwork to be served upon the debtor or third party (www.mchenrysheriff.org).

6. BEHAVIOR BEFORE THE COURT

All parties and persons must remember that they are appearing before a Judge of the State of Illinois. As such, all persons appearing before the Judge must exhibit proper behavior at all times. Examples of proper behavior are:

A. Dress Code. Dress appropriately for court. Hats may NOT be worn in the courtroom, and all persons appearing before the Judge should present a neat appearance. Work clothes are generally appropriate, but such clothing should be neat and presentable.

B. Speaking in Court. If you are not before the Judge, please remain quietly seated in the gallery until your case is called. When your case is called, you should approach the Judge. Unless you are examining a witness, you should only address your remarks to the Judge. You should NOT directly address your opponent unless

given permission to do so by the Judge. When you do speak, either to your opponent, a witness, or the Judge, be courteous at all times. The Judge will NOT TOLERATE arguing, yelling, name calling, and the like. If you engage in any such inappropriate behavior, you risk being held in contempt of the Court, in which case you may be either fined or sentenced to a term in jail.

C. Court Personnel. Please obey all directives by personnel of the Court. The bailiffs and clerks are in court to assist you and to assist the Judge in performing its functions and your assistance and cooperation is necessary to prevent problems or needless delay. If you have a question, please wait until the Judge takes a recess before approaching court personnel with your questions.

7. SUMMARY

This Manual contains a brief overview of the rules applicable to small claims actions. The Judge, the Clerk of the Court, and the Sheriff are all bound by these rules. Generally, you have a right to represent yourself in Small Claims Court. However, the Supreme Court Rules prohibit the Judge, the Clerk of the Court, the Sheriff, and other court personnel from answering any procedural questions that may arise. If this Manual does not satisfactorily answer any questions you may have, you should consult a licensed attorney.