

Small Claims Court & Beyond

From the Plaintiff's Perspective

The Illinois system of small claims court offers an informal proceeding allowing a person to bring suit against a person or business against whom they have a claim, without the need to hire an attorney. The person bringing the suit (the Plaintiff) can state his/her case to a judge of the circuit court. The judge then listens to the other party (the Defendant) and issues a court order containing the decision.

WHEN SHOULD YOU SUE IN SMALL CLAIMS COURT?

- Did your landlord refuse to return your security deposit?
- Did the bus or airline lose your luggage?
- Did you work for someone who failed to pay you?
- Did someone you paid to do a job do it so poorly that you had to pay someone else for further work?

All of these situations, as well as many others, are potential small claims cases. However, small claims court may not necessarily be the best solution to your problem.

CONSIDER THE ALTERNATIVES:

- Drop the action because it is not worth your time and effort.
- Try to talk directly to the other party; compromise is a good way to save a friendship and the time and expense of court.
- Attempt mediation with the other party; mediation works in a large majority of cases and is much cheaper and less time-consuming than an actual lawsuit.

WHO MAY SUE IN SMALL CLAIMS COURT?

ANYONE. There is no citizenship or residency requirement. However, the suit must be for **money only**, and the dollar amount must not be in excess of \$5,000. If you want to sue someone for an appliance, or some tangible item, you can only sue for the **value** of the goods, not for the return of them.

STEP 1. PREPARING AND FILING YOUR CLAIM.

The Circuit Clerk

The person who can be of the greatest assistance to you in preparing your suit is the Clerk of the Circuit Court. This person is the county government official whose duty it is to advise citizens on procedural questions. Because the clerk is not a lawyer, the clerk cannot offer you legal advice nor should you ask for it. What the clerk can do is assist you in filing the required forms. Because the clerk is paid to help you, don't hesitate to ask questions.

You should, however, go to the courthouse prepared.

- Figure the amount you are suing for
- Write a short statement of the claim
- Bring supporting documents you may have
- You must have the street address of the Defendant OR their place of employment

You will need this information to fill out your small claims complaint form.

The Office of the Circuit Clerk of Jackson County is located in the courthouse building on Walnut Street between 10th & 11th Streets in Murphysboro. The phone number is (618) 687-7309.

Where to File Your Claim

It is important to determine the proper county in which to file your claim. Generally, you must sue in either the county where the DEFENDANT resides or the county in which the cause of action arose. This may not necessarily be the county where you live.

The Filing Fee & Other Costs

After you fill out the small claims complaint form, you must pay a filing fee to file your complaint with the clerk. The filing fee for a claim under \$500.00 is \$45.50; for a claim of \$501.00 to \$2,500.00 the filing fee is \$60.50. The clerk will ask if you want the Defendant served by certified mail or by the sheriff. If you opt for the Sheriff to serve a summons, this will cost you an extra \$15 or more. If the Defendant is served by certified mail, it costs about \$1.50. If the Defendant resides outside Jackson County, you do not have a choice; the Sheriff of that county must serve the Defendant with a summons to court. You incur additional expense if you opt for a jury trial (this is not necessary and sometimes not in your best interests). If you WIN your case, the Judge will order the Defendant to pay costs; do not forget to ask for costs when you file your claim.

The Counterclaim

The Defendant in a small claims case has the right to file a counterclaim against you. This is not common, however, it does happen. For example, you sue your landlord for not returning all of your damage deposit; the landlord then claims you really did even more damage than the amount of your damage deposit; he counterclaims money against you. If the Defendant files a counterclaim, you will need to present your own case as well as defend yourself against the allegations of the Defendant's counterclaim.

STEP 2. PREPARING YOUR CASE

It is very important that you prepare your case properly. You may have a perfectly good claim, but if you go to court unprepared, you will only hurt your chances of winning. You must be clear and concise as possible and bring supporting documentation with you, if needed.

Some tips for court:

Sue for all of your expenses: consider phone calls, taxi fare for nonuse of car, etc. The court can always reduce the amount of your claim, but generally will not raise it. You must document these costs, the judge will not just take your word for it.

All witnesses in your case must appear **in person**. A written statement will do no good and will not be accepted by the court as evidence. If necessary, you can subpoena a witness to appear.

Be well prepared for trial; arrange all documents in logical order; summarize any that are long and complex; bring canceled checks as receipts, photographs which relate to your case, copies of complaint letters you wrote; any written documentation you may have to justify your claim.

Be organized and rehearse your story so you can relate the information to the judge in a factual, clear and concise manner. Make an outline or write notes for yourself summarizing the most important points you will make.

If you decide to settle the case before trial:

Make sure that you actually receive payment from the Defendant before you have your case dismissed. If the Defendant promises to pay you but cannot pay you before the scheduled court date, you can appear and request that the judge continue your case for a short time (i.e. 3 weeks) while you await payment.

If you have already received payment you should appear on the scheduled court date and ask the judge to dismiss the case.

STEP 3. THE TRIAL

It is possible that the Defendant will try to delay the trial. Usually the judge will grant one continuance of the court date for each party. You may object to the delay, however, you do not want to appear unreasonable.

The average Small Claims hearing takes about 20 minutes. Therefore, it is important that you are concise and well-organized. The judge does not want to hear a lot of irrelevant facts and ranting and raving. This will only hurt your position. Tell the Court what happened, when it happened and what efforts you have made to resolve the dispute before suing. Offer all documentation, photographs, etc., and show the object of the dispute if possible. If you have witnesses, introduce them and let them make *brief, factual statements*.

A written statement about something that happened (written by someone other than yourself) will not do in Small Claims court. This is considered hearsay evidence and will not be considered by the Court. If you want the opinion of someone else (like a mechanic) or the statement of someone else (who witnessed the dispute or whatever), that person must be present in the courtroom. All you can testify to is what YOU PERSONALLY know and have experienced.

The Defendant is entitled to cross-examine you and any witnesses you may have. When you are questioned, give truthful, precise answers. Do not ramble on or embellish and try to impress the judge. If you cannot remember something, say so. DO NOT LIE.

The Court will make its decision at the end of the trial. You may appeal, but this is really a lot of work, and great expense; usually, it is just not worth it for a small claims case.

If you can, consult with a lawyer before you appear in court, The lawyer can tell you which parts of your evidence are relevant to your case, and what documentation you will need to bring to prove you damages and costs. This will save the judge the time of sorting through what is relevant and what is not, and he/she will probably consider you more credible if you know what you are doing.

STEP 4. COLLECTING YOUR JUDGMENT

Now--even though you may have won your Small Claims case in court, you still must collect the money from the Defendant. Some Defendants will pay immediately or soon after trial. You may have to send a reminder to the Defendant to pay. Tell the Defendant that you would rather avoid Collection Proceedings. However, some Defendants must be pursued for the money.

There are two major types of collection procedures. You must take an aggressive role in this process and it usually requires extra fees in advance (which you may ask to recover from your opponent). Make sure the clerk has "entered" or registered your judgment in the court's books. The clerk of the court will have the most current information and some of the forms available, but you may need the help of an attorney.

TYPES OF COLLECTION PROCEDURES

WAGE GARNISHMENT

The Defendant must be gainfully employed and you must have the home address of Defendant and the name and address of their employer. Garnishment will cause a certain amount of money to be withheld from their paycheck. The maximum amount subject to collection is 15% of weekly gross pay. Under Illinois law the Defendant must also make over a certain amount of money in order for garnishment to occur (45 times the minimum wage of net earnings per week). It is up to you to go to court and obtain an order for garnishment of wages.

MEMORANDUM OF JUDGMENT

This memorandum will place a lien on the Defendant=s real property for a period of seven years, or until the Defendant settles the debt to you.

RESOURCES:

Students= Legal Assistance Office, Southern Illinois University, Carbondale, IL, 62901.
Ph. 618-536-6677

* (Services available for SIU students if the Defendant is not another student.)

Illinois State Bar Association Lawyer Referral Service
1-800-252-8916.

(They will refer you to local attorneys, with a nominal fee for the first visit.)

Alternative Dispute Resolution Clinic, 114 Lesar Law Building, Southern Illinois University,
Carbondale, IL, 62901. Ph. 618-453-3257

(Mediation service to help you resolve a dispute without going to court.)