

SMALL CLAIMS MANUAL



McLean County Circuit Clerk
Law & Justice Center RM 404
104 W. Front Street
Bloomington, IL 61701
309-434-6650
www.mcleancountyil.gov/circuitclerk

This information has been made available through the office of the McLean County Clerk of the Circuit Court. It has been compiled with the cooperation of the Judges of the Eleventh Judicial Circuit (McLean County). The purpose of this Manual is to assist parties appearing in small claims actions seeking monetary damages less than \$10,000 who are not represented by an attorney.

DISCLAIMER

This manual is for informational purposes only. Though this manual is designed to assist you if you decide to proceed on your own without an attorney, it is not intended to be a substitute for an attorney or for legal advice. **No employee of the Circuit Clerk's office is allowed to give legal advice.**

DEFINITIONS

Affidavit: a written statement made by a person who swears the statement is true.

Agreement: an understanding that is reached by people with a dispute. It is usually a list of future actions to help resolve the dispute.

Bench Trial: a court proceeding in front of a judge where each party to a case presents evidence and arguments to support his or her position.

Complaint: a paper that tells the defendant that the plaintiff has filed a lawsuit against him or her; why he or she is being sued; and how much money the plaintiff claims her or she owes.

Costs: fees the county charges for filing the lawsuit and serving the summons and complaint.

Default Judgment: a judgment entered by the Court against a party who does not show up at the trial or hearing.

Dispute: a conflict or disagreement between two or more people.

Judgment: a final decision of the court which resolves the case and states what the rights and obligations of the parties are. Like a court order, a judgment can be entered by agreement of the parties or after the judge has made a decision. A judgment is different from a court order as a judgment can be noted on your credit report/rating.

Legal Self-Help Center: located in Room 665 of the McLean County Law & Justice Center (the Law Library), it is a place where you can do legal research.

Mediator: someone who can meet with you and the other person with whom you currently have a dispute and help you both come to a resolution you can both agree on. A mediator does not make decisions like a judge. A mediator is neutral, meaning he/she does not take sides, and cannot offer legal advice.

Navigator: the assistant at the McLean County Legal Self-Help Center.

Party: the person who is suing (Plaintiff) and the person who is being sued (Defendant) are called parties to the litigation.

Praecipe: a request to the clerk to issue a particular writ, such as a summons.

Pro Se: a person is pro se if they are not represented by an attorney.

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 by a private process server.

Settlement: an agreement that the parties make to resolve a claim so they will not have to have a trial.

Subpoena: a paper that tells the defendant that he or she must appear before the court and gives the time and place to appear.

Witness: a person who testifies in court as to what he has seen, heard or done.

Writ: a former legal order or document.

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 Legal Self-Help Center at the McLean County Law & Justice Center, 104 W. Front St., Room 665, Bloomington, Illinois or on the Internet at <http://www.state.il.us/court/SupremeCourt/Rules/>. These rules are designed to enable an individual to collect a debt or settle any small legal controversy involving money. Small Claims Court can order a judgment for **money only**. It cannot require a person or business to perform a service, to stop a certain action or to return property.

A “small claim” action is defined by the Supreme Court Rules as an action where less than ten thousand dollars (\$10,000) in monetary damages is sought. In McLean County, only actions where less than ten thousand dollars (\$10,000) in monetary damages is sought are filed as small claims. THE INFORMATION CONTAINED IN THIS MANUAL PERTAINS ONLY TO SUCH SMALL CLAIMS. In McLean County, any claim over ten thousand dollars and less than fifty thousand dollars is filed as an arbitration case and subject to mandatory arbitration. You may find more information on mandatory arbitration at the Legal Self-Help Center or on the web at <http://mclean.illinoislegalaid.org>.

FILING THE ACTION

Should I file a small claims complaint?

A small claims case is a way to collect money owed. However, not everyone who owes money can be required to pay. Since collecting your money is the goal, you should consider the following before you file:

- The cost to file and pursue your case.
- The time the case will take, along with the value of your time.
- The likelihood that you can collect a judgment from the defendant.

You should understand that, for a variety of reasons, you may “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 do I start a small claims case?

To file a small claims complaint, the plaintiff must pay a filing fee (see fee schedule on page 12) and file a praecipe and short-form complaint. The praecipe and short form complaint can be found in the Forms Appendix to this manual.

What if I cannot afford the filing fee?

If you cannot afford the filing fee, you can ask that it be waived by the judge. The Clerk can provide a form for you called "Petition for Leave to Sue/Defend as a Poor Person," listing your income, assets and liabilities. You can also find the form in the Forms Appendix of this manual. The application will be reviewed by a judge, who will decide if the filing fee can be waived. If the judge denies your petition, you must pay the appropriate filing fee before a court hearing will be scheduled.

What should I put in the complaint?**Parties' names**

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, and 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.).

Defendant's Address

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 the summons has been served, the judge cannot schedule a trial or enter a judgment in the action.

Details of the Claim

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 document, a copy of the document should be attached to the complaint.

Corporations

No corporation may appear as a plaintiff or counter-plaintiff in a small claims 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 corporations.

What is the praecipe?

A praecipe is a form you must complete which directs the Circuit Clerk to issue summons for the Defendant. A form praecipe can be found in the Forms Appendix to this manual.

SERVING THE DEFENDANT

After I file a complaint, how do I notify the Defendant about my claim?

Each defendant must be served with a summons, together with a copy of the complaint, before you can proceed in court. By issuing a summons, the court informs the defendant of the plaintiff's claim and provides notice of the date and time the defendant must appear in court to answer the claim.

Who issues the summons?

The Clerk issues the summons and delivers it to the Sheriff's office or mails it to the defendant by certified mail.

How if the summons served?

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. If there is more than one defendant, request that the Clerk issue a summons to each defendant. When the Sheriff's office is requested to serve the summons, a bill for the cost of this service will be provided to the plaintiff. This must be paid before the Sheriff makes any attempts of service. (It is usually more convenient for the plaintiff to walk downstairs to the Sheriff and pay their fees while still in the building). The Sheriff will then return the summons (whether served or not) to the Clerk's office.

Alternatively, at the request of the plaintiff and instead 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.

When must the Defendant be served?

Each Defendant must be served no less than three (3) days prior to the Court date listed on the summons.

RETURN DATE (the first Court appearance)

What is a return date?

The summons directs the defendant to appear in court at a specific time on a specific date in a specific courtroom, which is called the "return date" or "appearance date." These dates are set two (2) Fridays per month; at either 9:00 a.m. or 10:30 a.m. (dates and times are subject to change). The return date is scheduled approximately 30 to 40 days from the date your complaint is filed.

What happens at the return date?

At the return date, the judge can do one of several things: enter a default judgment; dismiss the case for want of prosecution; enter a judgment by agreement; offer the parties small claims mediation; schedule a new return date if the defendant has not been served; or schedule a trial.

What if the plaintiff fails to appear at the return date?

If the plaintiff fails to appear at the return date, the judge may dismiss the case for want of prosecution.

DEFAULT JUDGMENT**What if the Defendant has been properly served and fails to appear at 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 judgment against the defendant.

SMALL CLAIMS MEDIATION

If the defendant appears on the return date and indicates that he or she wishes to contest the claim, and both parties are not represented by an attorney, the judge will offer Small Claims Mediation. Small Claims Mediation is a process that helps people who have a disagreement reach a settlement. A mediator helps the parties reach a settlement and is a neutral person who has no involvement with the case, is not a party to the lawsuit or a lawyer for any party. For more information about Small Claims Mediation, visit the Legal Self-Help Center or on the web at <http://mclean.illinoislegalaid.org>.

ALIAS SUMMONS**What if the Defendant is not served?**

If the defendant is not properly served by the first court appearance and you wish to proceed with your case, the judge will give you a new court date and direct the Circuit Clerk to issue an alias summons for the defendant.

What if the Defendant is served less than three days before the Court hearing?

If the defendant was served less than three (3) days before the Court hearing, does not appear and you wish to proceed with your case, you will be given a new court date by the judge and required to send notice to the defendant, notifying him/her of the new date. A sample form of notice is found in the Forms Appendix of this manual.

I'VE BEEN SUED; WHAT DO I DO?**How will I know I have been sued?**

If you are sued, you will be notified when you receive a copy of the Small Claims complaint and summons in one of two ways: 1) by certified mail; or 2) by hand delivery from the Sheriff or Private Process Server, to you or a household member of your family of the age of thirteen. The complaint will tell you the reason you are being sued and the amount claimed. The summons will tell you the date and time you are to appear in court. **DO NOT IGNORE THE SUMMONS.** If you do nothing in response to the summons, the Court may award the plaintiff the amount claimed in the complaint plus court costs.

What can I do after I have been sued?

When sued, you may choose to do any of the following:

- Appear on the return date and time and participate in Small Claims mediation (if you participate and reach an agreement with the plaintiff, your appearance fee will be waived)
- Appear on the return date and time and advise the Court whether you admit or deny the Claim (if you deny the claim, the Court will schedule a bench trial on a later date and you will be required to pay the appropriate appearance fee)
- File a written answer with the Clerk before the return date denying you owe the Plaintiff all or part of the amount claimed by filing an appearance form and paying the appropriate appearance fee (you should still appear on the designated court date so the Court can schedule the matter for a bench trial)
- If you believe the Plaintiff owes you money in connection with the reason he claims you owe him money, file a lawsuit (called a counterclaim) against the plaintiff and pay the appropriate fee (again, you should still appear on the designated court date so the Court can schedule the matter for a bench trial)
- Settle the dispute out of court.

BENCH TRIAL

What is a bench trial?

A bench trial is a hearing before a judge. Each party presents his or her evidence, and makes an argument why he or she should win the case. After hearing the evidence and arguments, the judge will make a decision, called a ruling.

How will the bench trial be scheduled?

If one or both parties refuse mediation, or a party is represented by an attorney, and the defendant contests the claim, the matter will be set for a trial on a date determined by the judge. ALL PLAINTIFFS AND DEFENDANTS MUST APPEAR ON THE TRIAL DATE. If any defendant fails to appear, judgment may be taken against him or her. If the plaintiff fails to appear, the case can be dismissed for want of prosecution.

JURY TRIAL

Can I have a jury trial in a small claims case?

Yes.

What are the differences between a bench trial and a jury trial?

A bench trial and a jury trial are different in several ways:

- A jury trial takes more time than a bench trial.
- A bench trial is less formal. You are at less of a disadvantage at a bench trial if you do not know legal procedures.
- You and the other party will participate in the jury selection process.
- Usually, people lacking legal training do not have the knowledge and experience to properly conduct a jury trial and, therefore, may actually be at a disadvantage.

How do I request a jury trial?

The plaintiff must formally demand a jury at the time the complaint is filed; otherwise, he will waive his right to demand a jury trial. The defendant must make a demand for a jury trial at the time the answer is filed or on the first appearance before the court if no answer is filed.

Are there any additional fees for a jury trial and who pays the fees?

Yes. 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 pay the higher fee for a 12-person jury (see the fee schedule for the appropriate fee).

TRIAL PROCEDURE

Who presents the case to the judge or jury?

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. **DO NOT EXPECT THE JUDGE TO CONDUCT THE TRIAL FOR YOU.**

Can I subpoena witnesses to testify?

Each party has the right to require witnesses to appear in court to testify before the judge. Normally, the judge cannot consider or accept the testimony of a witness who is not personally present in the courtroom. *Neither letters nor notarized statements are admissible evidence, unless the other party does not object.*

How do I subpoena a witness to testify?

Any party may request the Clerk of the Circuit Court to issue a subpoena for a witness. **The form Subpoena found in the Forms Appendix to this Manual is not valid unless signed and sealed by the office of the Circuit Clerk.** 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.

What procedures will be followed at the trial?

Both parties appear before the judge (or jury), and the plaintiff begins the trial by making a short statement of the nature of the case and what he or she expects the evidence to prove. The defendant then has an opportunity to also make a short statement about the nature of the case and what he or she expects the evidence to prove. Because of time limitations, the judge will often skip this portion of the trial, and begin with the presentation of evidence. 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 just party's favor.

When both parties have concluded their closing arguments, the judge will make a decision.

What can the judge consider when making his or her decision?

The judge may only consider the facts introduced into evidence at the trial. When the decision is given, the judge may explain the reasons for the decision to both parties.

POST-TRIAL PROCEEDINGS

What can be done after the judgment has been entered?

- After the trial is over, either party may file a motion to reconsider. The same judge who heard the original case must also hear the request to reconsider the judgment. When preparing the motion, the petitioner must explain the specific mistake made by the judge when making the decision.
- A judgment can be appealed to the Fourth District Appellate Court. This is a completely different proceeding and requires the petitioner to follow the appropriate appeal procedures set forth in the Supreme Court Rules.

JUDGEMENTS AND COLLECTIONS

What happens after the trial is over?

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. A judgment is not an order to pay.

What if I win the case and a judgment is entered for me?

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 McLean County will attempt to collect the judgment if the losing party (called the judgment debtor or debtor) refuses to pay.

How can I collect my judgment?

There are several common procedures that judgment creditors may use in trying to collect the judgment. Those methods are:

Citation to Discover Assets. Citations to Discover Assets are a good way for the creditor to discover what property and debts the debtor has. The citation is a mandate of the judge that the defendant appear before the judge, be sworn, and tell the creditor under oath what income and assets that he/she has which may be used to satisfy the judgment.

Wage Deduction Summons. This is a summons issued by the Clerk of the Circuit Court on request of 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, it is useless to file. If there are pre-existing wage deduction orders, they will take priority over your order. Additionally, a certain amount of a person's wages are exempt from collection.

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 the 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.

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. You may find additional information pertaining to fees and requirements at www.mcleancountyil.gov/recorder.

Payment Order. 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.

Are there any fees to these collection options?

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. The Circuit Clerk’s fee schedule can be found at page 12 of this manual. Additionally, the majority of these procedures require a service fee (typically to the Sheriff of McLean County) for the paperwork to be served upon the debtor or third party.

MISCELLANEOUS

What if I missed my Court date, and a judgment was entered against me?

If a judgment of default was rendered at the first appearance, the defendant can file a motion to vacate within thirty (30) days. A motion to vacate should explain why the defendant failed to appear. Good cause must be shown.

What is proper behavior before the Court?

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.

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 speak to the judge. You should NOT directly speak to 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 court, in which case you may be either fined or sentenced to a term in jail.

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.

What if the case is settled out of court or I decide not to pursue my case?

You should file a motion to dismiss the case in the Circuit Clerk's office. The Clerk will present the motion to the judge. A form motion can be found in the Forms Appendix of this manual.

What if the Defendant pays the judgment and costs in full?

You should file a form called "Satisfaction of Judgment" with the Circuit Clerk's office. A form can be found in the Forms Appendix to this manual.

**REMEMBER: FEES PAID TO THE CIRCUIT CLERK'S OFFICE IN THE
COURSE OF YOUR CASE ARE NOT REFUNDABLE!**

Circuit Clerk fee schedule can be found at: www.mcleancountyil.gov/circuitclerk

Forms may be found at: www.mcleancountyil.gov/circuitcourt