

What you can do if you lose a civil court trial

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The Self Help Legal Center

SIU School Of Law
104C Lesar Law Building
Carbondale, IL 62901
(618) 453-3217
e-mail: selfhelp@siu.edu

Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

Look for these symbols to tell you when to:



STOP!

You need legal representation or advice to continue.



USE CAUTION!

This is a complicated step so pay attention.



GO!

You can proceed to the next step.



CHECK IT OUT!

This issue is discussed in another packet.

TABLE OF CONTENTS

Disclaimer and Symbols you should look for	2
Table of Contents	3
Warning to all readers & Free sources of legal help	4
How to use this self help packet	5
Who these people are	6
Other options you may have	7
Who should not use this packet	8
Books you should read	9
What these legal words mean	10
Summary of the law in this area	12
Eight Steps to Filing you motion	13
Q & A about filing documents	16
Myths	17
Tips	18



Warning to all readers



4

Before you proceed with using this packet, you should ask yourself the following questions:

1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

3. Is this something that I can do on my own?

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

Free sources of legal help

Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

Toll Free: 877-342-7891

For additional information, you may visit their website at

[Http://www.lollaf.org](http://www.lollaf.org)

Prairie State Legal Services

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

800-331-0617

Coordinated Advice and Referral Program for Legal Services

serving Cook County

312-738-9200

Will County Legal Assistance

Serving Will County

815-727-5123



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.

Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:

People you should know

This section describes people that you may come into contact with in regard to a particular legal problem. It is important that you understand who these people are and what they do and don't do.

What these legal terms mean

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

Summary of the law in this area

This section contains summaries of important areas of the law that you need to know.

How to file a document in a court file

This section answers commonly asked questions about filing documents.

Myths and Tips

These two sections discuss commonly held misbeliefs about the law and steps that you should take (or not take) that could make your task easier.



Who these people are



Judge:

The judge is the person who presides over the courtroom. In most cases, the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled.



Circuit Clerk:

The Circuit Clerk is responsible for creating, managing, and updating court files. When you want to put something in a court file, see a court file, or make a copy of something in a court file, you talk to the Circuit Clerk's staff. In some courthouses, the Circuit Clerk also decides when cases are scheduled.



Sheriff:

The Sheriff's main duty is to keep the peace and to enforce the law. His/her role in the legal system, however, is usually to "serve" (give notice) to people of pending or upcoming court cases or hearings. The sheriff does this by giving the person a notice called a "summons." The sheriff also enforces the judge's orders.



Attorney:

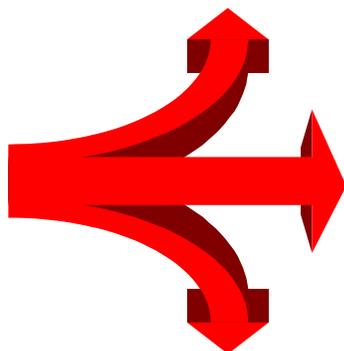
An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.



Mediator:

A mediator is someone who can meet with you and the person with which you currently have a dispute and help you both come to a resolution you can both agree on. A mediator is not a judge and does not make decisions, but rather helps you make a decision. In some counties, mediation is required in certain types of cases, including custody.

Appeal



If you are not happy with the outcome of your case and you have sufficient grounds you may appeal the final verdict to a higher court.

Grounds for appeal may include errors in courtroom procedure that caused one party to be treated unfairly, or an error in how the judge interpreted the law.

Either way if you think you have a basis for an appeal then you need to see an attorney immediately after the close of the trial. You have a limited amount of time to file an appeal and if you wait too long, you may lose that right.



Who should not use this packet?

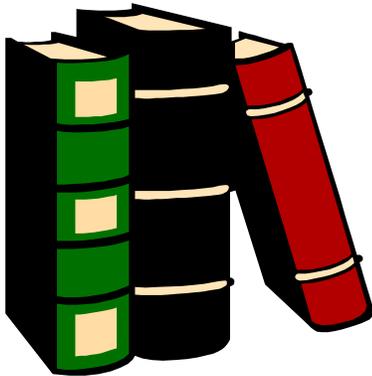
1. People who have criminal cases and not civil cases. This packet is not designed for criminal cases. If you want to request the type of relief discussed in this packet in a criminal case you should consult an attorney.



2. People who want to appeal their case to a higher court. This packet is designed to ask for a rehearing of a case by a trial court judge, not an appellate court. If you are using this packet it means that you are wanting the same judge, who has already made decisions in your case, to make a decision on your case again.

3. People in cases where there is not a judgment entered by the court. This packet is for cases where the court has entered a judgment or order with which you disagree. If this has not happened, you cannot use this packet.

Books on what you can do if you lose a court trial.

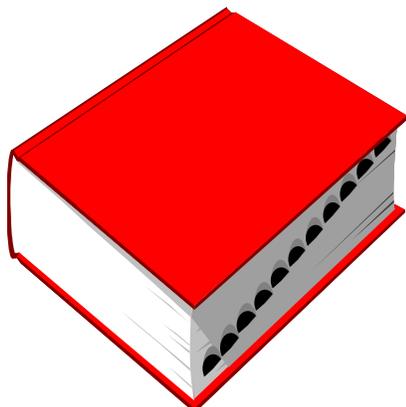


Disclaimer: Please Read!



The following is a list of publications which discuss the issues of what you can do if you lose a court trial . Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular book will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

There are no books that we can recommend at this time.



affidavit

A sworn statement by a person. Lying in an affidavit can lead to a charge of perjury.

circuit

The judicial system in Illinois is divided into Circuits. Each circuit defines a particular geographic area in Illinois.

defendant or respondent

A person who is sued.

hearing

An opportunity for both parties to tell the judge or jury their side of the dispute. Some hearings are court ordered so missing them can result in being held in contempt of court. For hearings which are not court ordered, failure to appear can result in the other side getting what they want in relief.

judgment

A decision or order of the court.

jurisdiction

Whether the court in a particular state has the power to hear a case or to order someone to do something depends upon whether it has "jurisdiction". Jurisdiction can be either over a person or over a subject. For a state court to have jurisdiction over a person, generally, the person must either reside in the state or have committed an act in the state.

motion

A written or oral request to the judge after a lawsuit has been started (see petition).

notary public

A person who verifies that a signature on a document. The notary public does not verify the content of the document itself.

plaintiff or petitioner

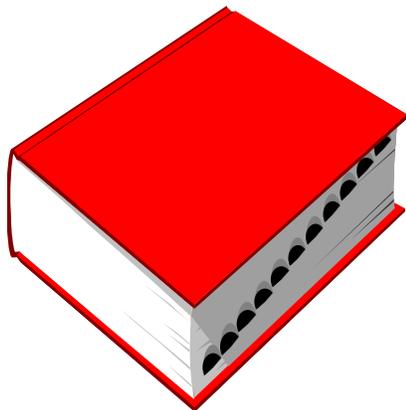
The person who starts a lawsuit.

pro-se

A person who is not represented by an attorney and is involved as a party in a lawsuit.

What these legal words mean, con't

11

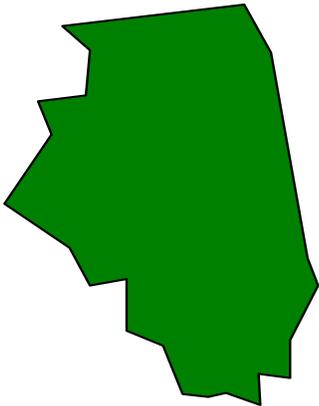


reconsider

To look at again or to consider again.

vacate

To make useless or without force or significance.



The law which governs most of the area of post trial/judgment motions in Illinois is discussed in Act 5, Section 2-1401, Chapter 735 of the Illinois Compiled Statutes (735 ILCS 5/2-1401) and in Act 5, Section 2-1301e, Chapter 735 of the Illinois Compiled Statutes [735 ILCS 5/2-1301 (e)].

What functions does a post trial/judgment motion perform?

These motions perform several important functions. First, they ask the trial court to review and reconsider its rulings made during the trial. Second, they preserve questions for review by the appellate court. Third, they permit the trial court to review a case. Fourth, they allow the trial court to correct the record, within limits. Fifth, they allow the trial court to grant additional relief. Finally, they usually stop enforcement of the judgment.

What is a Motion for New Trial?

A Motion for New Trial is a motion asking the judge to vacate his previous decision and hold a new trial, usually because an error in how the judge interpreted the law or because the evidence does not support the judgment. A Motion for New Trial is usually heard by the same judge that heard the case the first time.

What is a Motion to Vacate a Default Judgment?

A Motion to Vacate a Default Judgment is the same as a Motion for New Trial except you are asking the judge to vacate a judgment that was entered against you because you were not present at the hearing. As with the Motion for New Trial, this motion is usually heard by the same judge in the same court.

What is a Motion to Reconsider and how is it different from a motion to vacate?

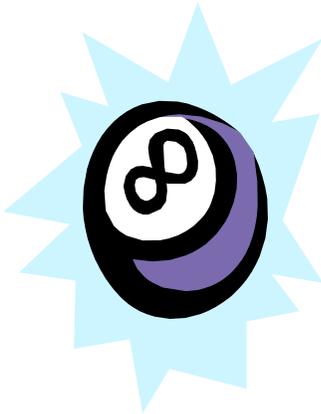
A Motion to Reconsider is a motion for the judge to reconsider his/her decision on the same set of facts and enter a new judgment without a new trial. The Motion to Reconsider is usually heard in front of the same judge that made the first decision. The Motion to Reconsider is different from the Motion to Vacate because you are asking the judge only to reconsider the judgment and not have a new trial.

What is the difference between an appeal and a Motion to Vacate or a Motion to Reconsider?

An appeal is asking a different judge in a higher court to review the case to see if an error has occurred; whereas the motions for a new trial and reconsider are heard at the same level of court and normally in front of the same judge that heard the case originally. If you are looking to file an appeal and not one of these motions, you need to see an attorney. The definition of an appeal is found in Supreme Court Rules Article 3, Rules 301 through 314.

Eight Steps to Filing Your Motion

13



Step One: Figure out which form to file

Before you can proceed in court you need to decide which of the motions you need to file.



If you failed to show up at the previous court date and had a default judgment entered against you and you have a valid reason for not showing up, the form that you need is **Motion to Vacate Default Judgment**.

If you would like the judge to hold a new trial, then use the **Motion for New Trial**.

If you would like the judge to reconsider his/her decision without holding a new trial, then file the **Motion to Reconsider**.



Step Two: Fill out the Proper Form

After deciding which form is the right one for you, use the Form Guide to help you complete that form. In the section where you describe the reason that you are requesting the motion you need to be as specific as possible.



IMPORTANT: If there is an issue that you want to raise at anytime during this process or an appeal process, you **MUST** do it now. If you do not raise the issue now then you will lose the right to bring that issue up at any other point in the appeal process. If you have any questions about this then it is important to see an attorney.

The judge will use this motion to decide whether to hear your full argument at a later date. In addition to telling the court what relief you are asking for, this form will also give notice to the other side that you are asking the judge to vacate/reconsider part of the judgment. Be sure to use the same case number as the original case.



Step Three: File the Proper Form

Take the motion form to the Circuit Clerk in the county where your case was heard and tell him/her that you wish to file this motion. At this time you may have to pay a filing fee.



Step Four: Send a copy of the motion to the opposing party

When you file your motion, you will need to notify the opposing party. You can send notice by certified mail. You will have to pay an additional charge for this. You will then need to complete and file the certificate of mailing form. This form can be found in the supplement to this packet.



Step Five: Request/Get a hearing date

Once you have served the opposing party, you will need to wait 30 days to see if he/she files a response to your Motion. If the opposing party has failed to file a response after 30 days have passed, you should request a hearing date.

If the opposing party has signed an Entry of Appearance, Waiver, and Consent form waiving service, you do not need to wait the 30 days before requesting your hearing.



If the opposing party has filed a response and it appears from the response that he/she has an attorney, or if an attorney contacts you at any time before or during the hearing, you should seek legal assistance immediately as it is not a good idea for you to proceed against a person who is represented by an attorney on your own.



You will need to contact either the Circuit Clerk or the secretary of the judge who usually handles the original case to request a hearing date. You can do this either by phone or by the mail.



Step Six: Wait

This may be the hardest step as you just have to wait for the hearing.



Step Seven: Attend the hearing

While there is no way to know exactly what will happen at your hearing, here are some things you should do:

*Bring with you copies of all the documents you filed with the circuit clerk and any other papers relating to your hearing.

*Arrive at least 30 minutes before your hearing. Whatever you do, don't be late. Check the docket or ask the clerk exactly what room you will be in . Tell the clerk or the judge's secretary that you are ready to proceed when called and wait for your case number and name to be called.

*When the judge enters the courtroom, stand until you are told to be seated. When your case is called, approach the bench. Always refer to the judge as "your honor."

*Before you begin, the judge may ask you some preliminary questions about your case. Be prepared to answer whether the other party was served, and if so, when.

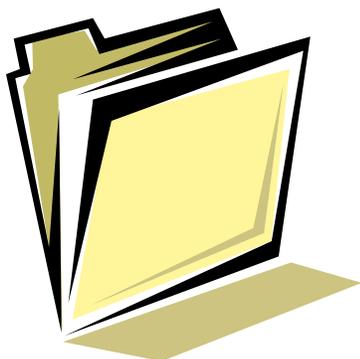
*To testify, you will need to call yourself as a witness. At this time, the judge will put you under oath and you will present your testimony using your written testimony as your guide.



Step Eight: Wrap it up

If you win, the court will schedule a new hearing of your case. If you lose, then you need to see an attorney because your only other option at this point will probably be to file an appeal to a higher court.





Q: What is a court file?

A: The file is the way that the courthouse keeps track of a lawsuit.

The file includes all of the documents that were filed, notices of hearings, notes by the judge and clerk, and letters to and from the judge and clerk.

Q: When do you need to file a document in a court file?

A: Generally, you will file a document when you want to:

have evidence that a task was completed; record an event or a statement; or give notice to someone about something.

Q: What does it mean to file a document in a court file?

A: Generally, filing a document means giving the Circuit Clerk a copy of a document so that he/she can place it in the court file you want it to go in. When the Clerk files the document, he/she will stamp it with a stamp that says the date (and sometimes the time) the document was filed.

Q: Does filing a document make it legal?

A: No. The Clerk will not check to make sure that your document is in compliance with the law. Most of the time you can file anything you want as long as you are willing to pay for the filing costs. It does not mean, however, that what you have filed is correct.

Q: Why is filing so important?

A: Most of the time, filing is the primary way to show that you have met the deadline for something — either to initiate a lawsuit or to notify someone of a lawsuit or a hearing. Filing is also the way that you notify the court of your answer (response) to lawsuit started against you.



Please note that failure to file something on time can cause you to lose your right to proceed with your claim or you may be forced to start over.



1. If your request for a new hearing is granted, the judge will re-hear the entire case.

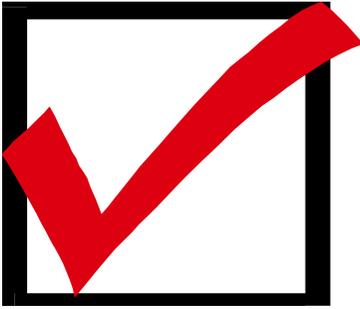
You should not assume that a judge would redo an entire hearing. Similarly, you cannot assume that the judge will only redo part of a hearing. Prepare to either do the entire hearing or just part of the hearing over again.

2. The judge will accept any reason if you missed your hearing (and were held in default).

Most judges will only accept a valid and reasonable excuse that you were not at your hearing. Forgetting your court date, having a doctor's appointment, or not having reliable transportation may not be a valid and reasonable excuse in every court. You should not assume that a judge will accept an excuse just because it sounds reasonable to you.

3. You can file a post-trial motion whenever you want.

There are time limits to almost everything in our legal system. For the motions in this packet, the time limit is thirty days from the date the judgment was entered by the court.



Get help

If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, then filing your own motion to reconsider, motion to vacate, or motion to vacate default judgment may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if doing your own motion, being persuasive, or getting the right documentation for your hearing, is too difficult a task for you then you should talk to an attorney.