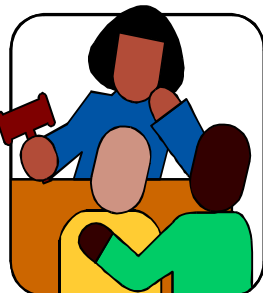


Small Claims Court in Illinois©

Court #4
July 1, 1998



The Self Help Legal Center
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Carbondale, IL 62901
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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:



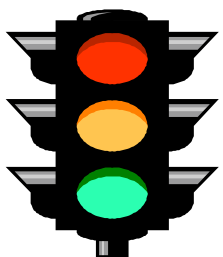
STOP!

You need legal representation or advice to continue.



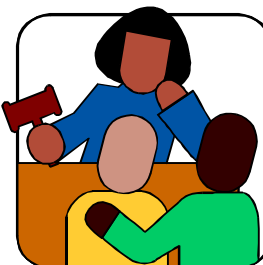
USE CAUTION!

This is very important so pay attention.



GO!

You can proceed to the next step.



CHECK IT OUT!

This issue is discussed in another packet.

Warning to all readers



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

618-462-0036

Prairie State Legal Services

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

815-965-2134

Coordinated Advice and Referral Program for Legal Services

serving Cook County

312-738-9494

West Central Legal Assistance

Serves Knox, Henderson, Stark, Warren, McDonough, and Fulton counties

800-331-0617

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, including small claims court, 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 that they are being sued. The sheriff does this by giving the person a notice called a "summons". The sheriff also enforces the judge's orders.



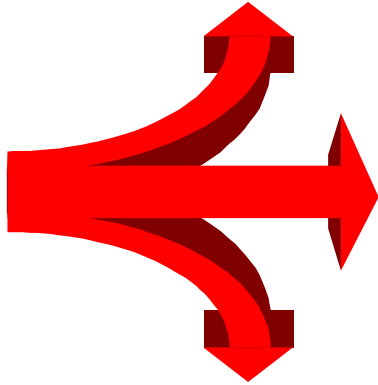
Attorney:

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 whom you 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 offered in certain types of cases, including small claims court.

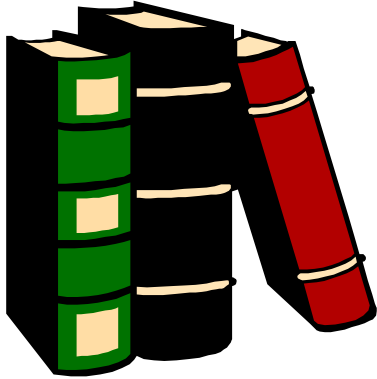


Mediation

In some cases, you may be able to work out an agreement with the other parent as to what visitation you should be getting. A mediator is someone who can meet with you and the person with whom you are having 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 and the other parent make a decision. In some counties, mediation is offered in certain types of cases, including small claims court.

Other publications on small claims court

8

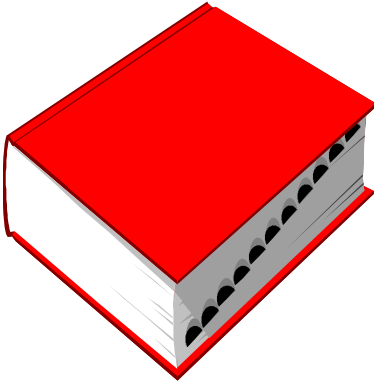


Disclaimer: Please Read !!

The following is a list of publications which discuss the issues of small claims court. 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 publication 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.

Life Advice: About taking legal action; Metropolitan Life Insurance Company

You and Small Claims Court; Lawyers and Judges Publishing Company, Tucson, AZ.



affidavit

A sworn statement by a person. Lying in an affidavit can result in a charge of perjury which could mean a fine, imprisonment, or both.

answer or response

The written response to a complaint or a petition that is filed by the defendant (the person being sued) in a lawsuit. In small claims court, you are not required to file an answer as long as you show up to the first scheduled hearing on the plaintiff's complaint.

circuit

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

exemption rights

In Illinois, certain property (including cash, income, personal property, and a portion of your car and home) cannot be taken from you to pay a debt. This property is called exempt property. If a judgment is entered against you in Illinois, you have the right to claim this property as exempt and not use it to pay a debt against you. For a discussion of your rights as a debtor, see Packet #1 of the Consumer Series.

default

If a person who is sued fails to appear at the first scheduled hearing (or any subsequent hearings) and/or if he/she fails to file an answer to a complaint, petition, motion, etc. filed against him/her, he/she can be held in default. Being held in default means that the other side (the person who filed the complaint, motion, petition) will usually receive whatever relief or money they were asking for.

defendant

A person who is sued.

hearing (trial)

An opportunity for both parties to tell the judge or jury their side of a 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 final 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 thing. 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 that gave rise to the case.

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 is made by the person whose signature appears. The notary public does not verify the content of the document itself.

petition or complaint

A written request to the court. A petition usually starts a lawsuit and contains the facts that one person alleges has happened along with the relief that they are requesting from the court.

plaintiff or petitioner

The person who starts a lawsuit.

pro-se

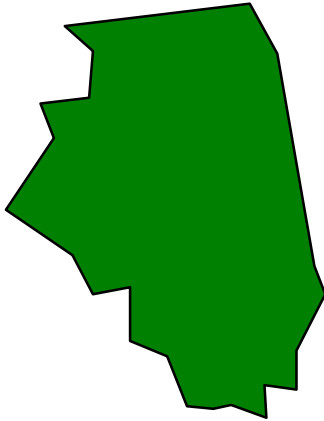
A person who is not represented by an attorney and is involved as a party in a lawsuit.

serve or service

The process where a person is officially notified of a pending lawsuit.

statute

The law that the state legislature or federal government enacted on a particular subject.



Small Claims Court in Illinois is discussed in Rules 281 to 289 of the Illinois Supreme Court Rules. They can be found in a special section entitled Supreme Court Rules in the Illinois Compiled Statutes.

What is Small Claims Court?

Small claims court is a division of the court system which is reserved for complaints which involve an amount of \$5000 or less.

What kind of relief can you get from Small Claims Court?

The only relief that you can get from Small Claims Court is a judgment for money. If you are looking for some other type of relief (like a piece of property or an order for someone to do something) then you cannot pursue your claim in Small Claims Court.

Do you need an attorney to file a claim or represent you in Small Claims Court?

No. The procedure for small claims court is simple and informal so people can sue on their own behalf without the assistance of an attorney. This does not mean, however, that the person you are suing or the person suing you cannot have an attorney.

Jury demands

A person can have a jury in small claims court if he/she requests it at the time they file their complaint or if they are the defendant, at the time they show up to the first scheduled hearing on the plaintiff's complaint. A party demanding a jury must pay a fee of \$12.50 for a jury of 6 persons or \$25.00 for a jury of 12 persons.

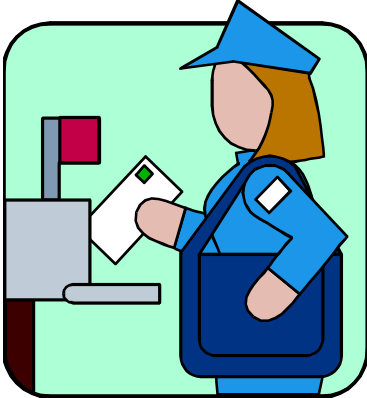
Informal hearings

In any small claims case the judge may conduct an informal hearing on the dispute. At this hearing, all relevant evidence is admissible and the court can relax the rules of procedure and evidence. The court can also call any person present to testify and can participate in the direct or cross examination of any witnesses or party.

Special attorney rules for corporations

A corporation cannot sue someone in small claims court unless they are represented by an attorney. A corporation can appear as a defendant, however, in a small claims case as long as the amount being claimed is \$1500 or less.

Special service rules in small claims court



The court must have jurisdiction over you to give you what you want. Similarly, to order a person to do pay you money — the only relief you can get in small claims — the court must have jurisdiction over the person you are suing.

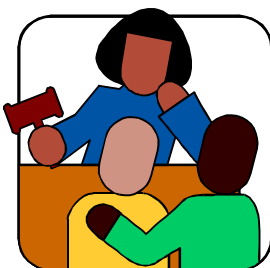
To get jurisdiction over the person you are suing, you must give him/her personal notice or “serve” them with your complaint.

In Small Claims Court you have the option of “serving” or notifying the person you are suing by certified or registered mail **IF** the person you are suing lives in the county in which you have filed your complaint.

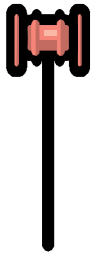
How you notify or “serve” someone by mail in Small Claims Court

Serving by mail can be completed in 3 steps.

1. Complete the Small Claims Complaint and Summons form found in the supplement to this packet or you can use the Complaint and Summons form provided by the Circuit Clerk in the county in which you have filed your complaint.
2. Give the Complaint and Summons form, \$2.00, plus the cost of mailing to the Circuit Clerk. The Clerk will tell you the cost of mailing.
3. The Complaint and Summons must be delivered to the Defendant at least 3 days before the date of the hearing for the service to be complete.



If the person you are suing does not live in the county where you have filed your complaint, but he/she lives in Illinois you should see Packet #1 of the Court Series. If the person you are suing lives outside the State of Illinois, you will need to use Packet #2 of the Court series.



STEP 1: FIGURE OUT WHERE TO FILE:

The law requires you to file your small claims complaint in the county where the person you are suing lives **or** in the county where the event which caused you to file a complaint occurred. If you are unsure where to file, then file the complaint where the person you are suing lives.



STEP 2: GO TO THE CIRCUIT CLERK'S OFFICE:

Go to the Circuit Clerk's office at the courthouse in your county and ask the Clerk for a small claims form. If they do not have a form, you can use the one found in the supplement to this packet.



STEP 3: FILL OUT THE COMPLAINT FORM:

You must provide your name and address and the name and the address of the person you are suing. If you are filing the complaint, you are the Plaintiff. The person you are suing is the Defendant. You will also have to describe the nature of your complaint and the amount of money you are claiming. Finally, you have to attach to the form copies of any relevant documents such as receipts, estimates, bills, or agreements. After you have filled out the form, you must sign it in front of a Notary Public. You can find a Notary Public at your local bank, or at the courthouse.



STEP 4: FILE THE COMPLAINT:

Take the Complaint form to the Circuit Clerk and tell him/her that you wish to file your complaint. At this time you will have to pay a filing fee and if you want a jury trial, you must demand one now. If you do not request a jury, a judge will decide your case. You will have to pay an additional charge for a jury trial. If you are a person of low income, you can apply for a fee waiver. A copy of a form called an Application To Sue As A Poor Person is at the back of this pamphlet. You should give this form to the Circuit Clerk and ask that it be presented to a judge for his/her approval.



STEP 5: SEND A COPY OF THE COMPLAINT TO THE PERSON YOU ARE SUING:

When you file your complaint, the Clerk will ask you how you want the person you are suing notified. If the person you are suing lives in the county in which you are filing your complaint, you can send notice by certified mail. You will have to pay an additional charge for this.



If the person you are suing does not live in the county where you file your complaint, you will have to have the Sheriff of the county where the person you are suing lives serve him/her with a copy of the complaint. Service of someone by Sheriff inside Illinois is discussed in Packet #1 of the Court series. Service of someone by Sheriff outside the State of Illinois is discussed in Packet #2 of the Court series.

STEP 6: PREPARE FOR THE HEARING:

In the supplement to this packet, you will find a Small Claims Judgment form. You will want to take this form with you to your hearing.

In addition, you should take whatever documents, notes, receipts, pictures that you need to prove your claim. Keep in mind, however, that in some cases, documents or written statements cannot be used as evidence unless the person who wrote the document appears in court as well. If you need certain evidence to prove your claim, do not rely on a written statement even if it is a sworn statement like an affidavit. Instead, you should ask the person to appear at your hearing and if they refuse, you should subpoena them to appear.

Do not assume that the judge will give you a continuance (postpone the hearing) so that you can subpoena or ask witnesses to appear in court. Most judges will not do this. Instead, you should prepare for your hearing (including having your witnesses ready to testify) as if you will have your hearing on the date scheduled by the Clerk.



Please note that failure to show up to your hearing will likely result in your Complaint being dismissed even if the other party (the party you sued) does not appear.

I have been sued in small claims. What do I do?

In Illinois, you do not need to file a response to a complaint filed against you in Small Claims Court.

If you disagree with the claim made in the Complaint, simply show up to the first scheduled hearing on the plaintiff's complaint and tell the judge what you disagree with.

If you do not show up, then the hearing will be held without you and you will, most likely, be held in default. Being held in default means that you lose and the judge may award whatever money that the other side was asking for in their Complaint.

Similarly, if you show up and tell the judge you do not disagree with the Complaint or that you owe the money, the judge will rule in favor of the Plaintiff (the person suing you) and will give him/her a judgment in the amount of money he/she had requested in their Complaint.

If you are unsure as to what your rights are, you should seek the assistance of an attorney.

When do I find out when my hearing is?

If you are filing the complaint, the Circuit Clerk will inform you as to when your hearing will be when you file your complaint. The time, date, and place of the hearing will be put on the Summons that is sent to the Defendant.

If you are the person being sued, the date and time of the hearing will be on the complaint and/or the summons you received.

If you lose your Summons or if you simply forget when your hearing is, simply call the Circuit Clerk and ask when your hearing is.

What do I need to take to trial?

You should take to trial any witnesses, papers, objects, or photographs you want the judge to consider.

What will happen at the hearing?

When your case is called, the judge will usually ask the person being sued if they admit or deny the allegations made and/or the amount requested in the complaint. If they do, then another hearing or "trial" will be held. The trial can either be held immediately, later in the day, or even on another day later in the week, month, or year.

When the trial is held, the person who filed the complaint will have the first chance to present his/her evidence and witnesses. When they are finished, the person who was sued will have his/her chance to present evidence and witnesses. Don't try to talk when the other side is presenting their case, regardless of what they might say. Simply allow them to finish and then present your side of the story.

The judge can then ask questions of either party as well as any of the witnesses. After hearing all of the evidence, the judge and/or the jury will then decide whether to dismiss the case or whether to award the person who filed the complaint any damages. The amount in damages may be different than what was asked for in the complaint and will be set by the judge and or the jury.

Of course, the best way to find out what will happen at your small claims hearing is to go to court and watch someone else's small claims case. In most counties, all the small claims cases are heard on a certain day by a certain judge. Call the Circuit Clerk in the county in which your complaint is filed and find out what that day is. Then go and watch and see how the judge handles small claims cases.

What happens if I lose?

If you filed the complaint:

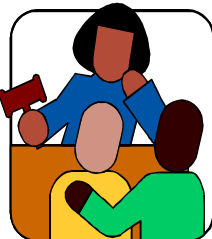
If you lose, your complaint will be dismissed and you will not receive any amount in damages. The judge might also have you pay the other side's costs or attorney's fees, if there are any.

If your request for relief was denied because you did not have enough evidence to support your request, then you will have to wait until the circumstances surrounding your request for support change before you can file another Complaint. The reason for this is because once the court makes a decision about an incident or an event, it cannot address that same incident or event again. If your request was denied because of some procedural error on your part (for example, you did not get proper service), then you should correct the error and request another hearing.

If you were the person being sued:

If you lose, a "**judgment**" will be entered against you. A judgment is simply a piece of paper signed by a judge which states how much you now owe the person who filed the complaint. The judge may then ask you to work out a payment plan with the opposing party and/or his/her attorney. You should be careful about this because any payment plan you agree to will become part of a **court order**. If you violate a court order by not making a payment, you could be held in contempt of court.

Consequently, if you cannot make any payments on the judgment, you should simply inform the opposing party, their attorney, and the judge of your financial situation and tell them that you will try to make payments when your financial situation improves. If the judge and/or the opposing party tells you that you have to make payments, you should be aware of what are called your **exemption rights**.



If your property and/or your income are exempt from judgment, you cannot be required to pay the judgment until your income or assets rise above the exempt level.

It is your obligation to inform the court of your exemption rights. Consequently, if you agree to a payment plan in court and it becomes a court order, the court could say that you have waived your exemption rights. Do not agree to make payments that you cannot afford. For more information on your rights as a debtor, see packet #1 of the Consumer Series

If you were either the plaintiff or the defendant:



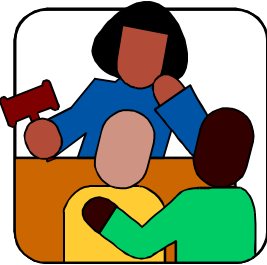
Finally, whenever you lose in court, you have the right to request the court to reconsider its decision and you have the right to appeal the decision to a higher court. Please note that in most cases you have 30 days or less from the date of the judge's decision to exercise these rights or you may lose your right to reconsideration or appeal. You should seek the assistance of an attorney to exercise these rights.

What happens if I win?

If you are the person who filed the complaint, and you win, then you will receive what is called a "judgment" against the person you are suing. As stated earlier, a judgment is simply a piece of paper signed by a judge which states how much you are owed. You do not get your money right away. In fact, if the person you sued has only **exempt** assets or income (see page 17), you might not get your money until some future date.

If you are the person who was sued, and you win, then you may receive your costs, including attorneys fees, from the person who sued you. You also should not have to pay the person who sued you the money he/she was asking for.

How do I collect the money I am owed?



Some courts allow you to simply write the judge a letter and ask for a hearing to find out why you are not being paid. Some do not. If you need help getting a hearing set or having a **lien** placed on a piece of property, you may need to contact a private attorney. For a discussion on collecting money when you win in court, see Packet #5 of the Court series.



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.



5 Commonly held beliefs about small claims court which are not true:

I cannot show up without an attorney

Yes, you can. Small Claims Court is designed to be much less formal than regular court and as such, many people appear in Small Claims Court without an attorney. If you find that you need legal advice, however, you should seek the assistance of an attorney.

Attorneys are not allowed in small claims court

Just because most people appear in small claims court without an attorney does not mean that you or the opposing party is prohibited from appearing with an attorney. In fact, corporations in most cases must have an attorney to appear in small claims court.

An estimate or a written statement from a person is OK

No, it is not. While a judge does have the power to relax the rules of evidence in small claims court, most judges will not accept a written statement from a person (including an estimate of damages) as evidence. As such, if you need certain evidence or testimony to prove your case, you should either bring or subpoena that person to court on the date of the hearing or trial.

If I win, I get my money.



Not necessarily. As a plaintiff, if you win in court you will receive a judgment. A judgment is just a piece of paper signed by a judge saying that the other party owes you money. It is up to you to enforce the judgment if the other party refuses to pay the money you are owed. For a discussion on collecting money you are owed, see Packet #5 of the Court Series.

If I lose, I have to pay right away or agree to a payment plan



You may not have to pay right away or agree to a payment plan depending upon your level of income and assets. You may have exemption rights which means that you may not have to use the few resources and income that you do have to pay the debt(s) that you owe. For a discussion on your rights as a debtor in Illinois, see Packet #1 of the Consumer series.



Try to get agreement

where you can

While it is not required, if you can get agreement with the other party on any part of your dispute it will make the process easier. In fact, it may improve your chances of getting the money you are owed especially if the person you are suing has exempt assets or income.

Go to other small claims court hearings before yours

If your county courthouse has a special date when they schedule the small claims court hearings, try to attend at least one hearing before the date of your hearing. This way, you can watch what happens, (including what mistakes others make) take notes, and be more prepared for your hearing date.

Take whatever you need to prove your claim

Remember that you can only testify as to facts or events of which you have direct personal knowledge. If you need a witness, document, picture, etc. to prove something, make sure that you bring it with you on the date of your hearing. Do not assume that the judge will give you a continuance to get this information or that the judge will require the other party to give this information to you.



Similarly, keep in mind that documents like letters, estimates, and written statements may not be considered by a judge if the person who wrote the letter/estimate/or statement doesn't appear in court on the date of your hearing. If you need this evidence to prove your claim, you should either bring these people with you or subpoena them to appear in court.

Get help if you need it

If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, appearing in small claims court 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 representing yourself in small claims court proves to be too difficult a task for you, talk to an attorney.

