

SMALL CLAIMS MANUAL

This information has been prepared
and is presented as a public service
by the lawyers who make up the
Tazewell County Bar Association.

It is distributed without charge by the
Tazewell County Circuit Clerk,
Lincoln C. Hobson

IN GENERAL

This manual has been prepared to help people involved in "small claims" cases filed in Tazewell County, Illinois. A small claims case is a civil case involving an amount of money not in excess of Ten Thousand Dollars (\$10,000.00). The rules relating to small claims cases are set forth in the rules of the Illinois Supreme Court (Illinois Supreme Court Rules 281-289). They are designed to help an individual to collect a debt, or settle any legal controversy involving damages only, without going through as much legal process and expense as might be required for a larger claim.

PROCEEDING WITHOUT A LAWYER

AN INDIVIDUAL WHO PROCEEDS WITHOUT A LAWYER IS HELD TO THE SAME LEGAL REQUIREMENTS, BOTH IN FILING THE CASE AND IN PRESENTING EVIDENCE AND ARGUMENT, AS IF HE OR SHE HAD HIRED A LAWYER.

IF AN INDIVIDUAL CHOOSES TO PROCEED WITHOUT A LAWYER, HE OR SHE MUST REALIZE THAT CERTAIN RESPONSIBILITIES REST UPON THEM.

SERIOUS CONSIDERATION MUST ALWAYS BE GIVEN TO THE ADVISABILITY OF OBTAINING A LAWYER AND LEGAL ADVICE.

NEITHER THE COURT CLERKS, BAILIFFS, SHERIFF'S DEPUTIES, NOR THE JUDGE CAN GIVE LEGAL ADVICE OR ASSISTANCE AS TO THE PROPER WAY TO PROCEED IN ANY LEGAL CASE. JUDGES HAVE NO OBLIGATION TO ASK QUESTIONS OR MAKE OBJECTIONS ON BEHALF OF EITHER PARTY, AND MAY NOT TAKE SIDES IN ANY PROCEEDING. JUDGES MUST RULE ON ALL MOTIONS AND ON THE CASE WITHOUT REGARD TO WHETHER OR NOT A PARTY HAS A LAWYER.

FILING THE CASE

To file a small claims case, the party asking for money must prepare and efile a short form complaint. A filing fee will be due at the time you efile a case. The amount will depend on the amount of the claim. The person filing the complaint is called the "plaintiff" and the person being sued is called the "defendant". While forms for the complaint are available in the office of the Circuit Clerk on the second floor of the courthouse and online at <http://tazewellcountyil.com>, clerks are not allowed to help prepare this form.

The information needed is:

- a. The plaintiff's correct names, address, and phone number (if he or she has a phone) and the correct name, address, and phone number of the defendant. It is important that the correct legal name of each party be set forth, including the correct business or corporate name of a business being sued.
- b. The correct name, address, or place of employment of the defendant must be given so that service of legal papers can be made on the defendant. If the defendant cannot be served with the papers, a Judgment Order can usually not be entered.
- c. The nature and amount of the plaintiff's claim, including dates, amounts, and other information necessary to establish a case. If the claim is based upon written documents or contracts, copies of those documents must be attached to the complaint. It is the plaintiff's responsibility to do this.
- d. Before filing your complaint and summons, you will need to call the Circuit Clerk's office at 309-477-2214 and obtain a hearing date for the summons. You must put the hearing date on the summons before e-filing it, or it will be rejected.

WHERE TO FILE

Generally, you must file your claim in the county where:

- a. The defendant resides; or
- b. The events happened which you believe give you the right to sue.

A corporation is considered to reside in any county where it does business or has an office.

HOW TO FILE YOUR COMPLAINT AND SUMMONS

E-filing is now mandatory in Illinois for documents in all civil cases with limited exceptions. To e-file, you must first create an account with an e-filing service provider. Visit <https://efile.illinoiscourts.gov/service-providers.htm> to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit <http://www.illinoiscourts.gov/FAQ/gethelp.asp>.

SERVICE OF SUMMONS

The summons (a copy of the complaint and the legal notice of the case and the first court date) may be personally served on the defendant by the sheriff or by a private process server. The summons will be issued by the Circuit Clerk, but it is the plaintiff's responsibility to arrange for service of summons and pay the service fee or charges.

The correct address or place of business of the defendant is important for service of the summons. RR addresses need specific directions or box numbers. Post office boxes are not adequate for sheriff's service of summons. It is the plaintiff's responsibility to provide enough information to assure service of summons.

COURT COSTS

SMALL CLAIMS DIVISION

<u>Filings and Answers:</u>	<u>Amount:</u>
1. New case claim does not exceed \$250.00	
Filing Fee:.....	\$114.00
Answer or Appearance:	\$134.00
2. New case claim from \$250.01 to \$500.00	
Filing Fee:	\$124.00
Answer Appearance:.....	\$134.00
3. New case claim from \$500.01 to \$2,500.00	
Filing Fee:.....	\$144.00
Answer:	
a. Does not exceed \$1,500.00.....	\$134.00
b. From \$1500.01 to \$2,500.00.....	\$164.00
4. New case filed from \$2,500.01 to \$10,000	
Filing Fee:.....	\$179.00
Answer:	\$164.00

Normally the Court will order the losing party to reimburse the winning party for their actual court costs and service fees. This includes the costs of filing suit, sheriff's fees, and any other necessary fees. Court costs DO NOT include travel expenses to and from the courthouse, income lost in pursuing or defending the claim, or telephone calls, postage or other monies spent in trying to collect the claim before suit was filed.

SUMMONS RETURN INFORMATION

If you are a plaintiff, you must go to the sheriff's office and pay for your service of summons before the court date. You must e-file the affidavit of service of summons into your case prior to your court date. The judge cannot proceed with your case without the affidavit of service of summons showing service on the defendant. The form you receive from the sheriff's office is not the summons, but the bill showing that service has been obtained or that the defendant cannot be found for service. When you pay this bill, you will receive the affidavit of service of summons that you need to e-file into your case before court.

If you employ a private process server, the procedure is the same as above; however, some private process servers will efile the summons return for you if you have paid your bill. You may want to ask the process server about this service.

I'VE BEEN SUED, WHAT DO I DO?

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 hand delivery from a sheriff (2) by hand delivery from a private process server to you or to a household member of your family over the age of 13.

The complaint will tell you the reason you are being sued and the amount claimed. The summons will tell you when and how to e-file your answer or appear in court. It is not required that you file an answer if you appear on the first hearing date. **DO NOT IGNORE THE SUMMONS.** If you do nothing in response to the summons, the court will probably award the plaintiff a judgment for the amount claimed plus court costs.

If you admit owing the amount claimed and can pay the plaintiff before the court date, you may be able to avoid a judgment being entered against your name on the court records. If you contest the plaintiff's claim in whole or in part, you must appear in person on the court date set in the summons. The purpose of the return date is to determine if the claim is contested or uncontested to put the case on the trial call.

THE FIRST APPEARANCE

On the date set for the first court appearance of the parties each party should report to the bailiff of the court before the time set for the appearance. The bailiff will be sitting outside the courtroom, wearing a red coat. You should not enter the courtroom until you have checked in with the bailiff and your case has been called.

The bailiff will call individual parties into the courtroom at the appropriate time. The judge will briefly advise the parties of the procedure to be followed, and will then proceed to call the cases set for that time. As cases are called, the judge will determine whether the parties are present and will proceed in the following manner.

1. If the plaintiff is not present and no prior arrangements for a continuance have been made, the case will be dismissed, whether or not the defendant is present. Prior arrangements may NOT be made by calling the court clerk or the Circuit Clerk, but must be based upon a written motion or the agreement of all parties.
2. If the plaintiff is present and the defendant has not been served with summons, an Order allowing additional time for service of summons will be entered.
3. If the plaintiff is present and the defendant is not present, but has been served with summons, if the complaint is sworn to, or the court hears evidence as to the amount due, a Default Judgment will be entered in favor of the plaintiff for the amount claimed due and for court costs.

4. If the plaintiff is present and the defendant is also present, the defendant will be asked by the court whether he or she disputes the claim, and one of the following will be done:
 - a. If the claim is not denied or disputed, an Agreed Judgment will be entered for the amount claimed due plus court costs.
 - b. If the claim is disputed, the court, upon the request of either party, will set the case for a date certain for bench trial or jury trial, if properly demanded. The parties will be advised to be present on that date with all evidence and any witnesses necessary to prove their case.
 - c. The court, on its own motion or at the request of any party, may adjudicate the matter at an informal hearing pursuant to court rules.

TYPE OF TRIAL

All cases will be tried by bench trial (by the judge) unless a jury demand is filed by the plaintiff at the time he or she files the case, or by the defendant when he or she enters his or her appearance, but no later than the first court appearance date. The appropriate statutory fee must be paid at the time the demand for jury trial is made. The fee for jury trial is \$12.50 for a six person jury and \$25.00 for a twelve person jury.

INFORMAL HEARING

If the court orders or the parties ask for an informal hearing, a hearing will take place at which all relevant evidence shall be admissible and the court may relax the rules of procedure and the rules of evidence. The court may call any person present at the hearing to testify and may conduct or participate in direct and cross examination of any witness or party. At the conclusion of the informal hearing, the court shall make a decision and explain his or her reasons to all the parties.

TRIAL

On the date of the trial, both parties go into court before the judge and the plaintiff proceeds to present proof of his or her case. Witnesses called by the plaintiff are sworn and questioned under oath on the witness stand. After each witness testifies for a party, the other party has the opportunity to also question (cross-examine) that witness as to anything he or she has already testified to. Plaintiff presents witnesses first, then defendant, and finally plaintiff has an opportunity to present witnesses which explain or clarify any new matter raised by defendant's witnesses or evidence.

After all witnesses are heard and evidence is introduced, each party may present a brief summary of the evidence, and a statement of what the court should do and why, based on the evidence.

The court will then rule. The judge must decide the case from the facts in evidence introduced on the date of the trial. Judgment must be entered based upon these facts alone and the law of the State of Illinois.

The decision of the court is final unless appealed within thirty (30) days.

In the event of a jury trial, the parties must be ready and able to pick a jury in accordance with the rules and must have written jury instructions ready on the date of trial.

JUDGES ARE NOT PERMITTED TO, AND WILL NOT, TRY YOUR CASE FOR YOU. IF YOU DO NOT HAVE A LAWYER, THE RESPONSIBILITY TO FOLLOW COURT RULES AND TO PRESENT COMPETENT, RELEVANT, AND ADMISSIBLE EVIDENCE TO PROVE YOUR CASE ON THE DATE SET FOR TRIAL IS YOURS ALONE.

CONTINUANCES

Continuances in small claims cases are discouraged and will not normally be granted, except by agreement of the parties and in cases involving extreme hardship or emergency. A case will not be continued simply because the clerk's office was called. It must be done by motion before the court or by agreement of the parties.

JUDGMENTS

Once a court decides a case, it enters judgment for the plaintiff or the defendant for whatever amount is found to be due, and assesses court costs in appropriate cases. Many persons have the mistaken belief that by merely filing a complaint, a judgment will be automatically entered and the court, the clerk, or the sheriff will see that the money is paid after judgment is entered. A money judgment is merely a legal document which recognizes indebtedness and which gives the plaintiff the right to try to collect that judgment in accordance with Illinois Law governing collection of judgments. The fact that you receive a judgment does not guarantee that judgment will ever be paid.

THE PLAINTIFF MUST TAKE WHATEVER STEPS ARE NECESSARY TO COLLECT A JUDGMENT IF DEFENDANT REFUSES TO PAY. SERIOUS CONSIDERATION SHOULD AGAIN BE GIVEN TO OBTAINING A LAWYER TO ASSIST WITH COLLECTION PROCEDURES.

DISMISSALS AND RELEASES

If a claim is paid, with costs, while the case is still pending, the plaintiff should prepare and e-file a motion to dismiss the case.

When a judgment has been fully paid, the plaintiff should execute a Release of Judgment and e-file the Release of Judgment into the case (forms are available in the Circuit Clerk's office).

SUMMARY

This manual summarizes the rules for small claims cases in Tazewell County. The Judge, the Circuit Clerk, the Court Clerks, and the Sheriff and his employees are all bound by these rules. It is your right to represent yourself in small claims court, whether you are the plaintiff or the defendant.

However, the Supreme Court Rules prohibit any of the above officers or any other court employee from answering procedural questions which may arise or from assisting in any way in presenting your case. If your questions cannot be satisfactorily answered by this manual, **YOU SHOULD CONSULT THE LAWYER OF YOUR CHOICE.**

MISCELLANEOUS SUGGESTIONS

1. A case number will be assigned when your e-filed complaint is accepted. Write down the number and refer to it in all dealings with the Clerk and the Sheriff.
2. If you should change your address after you file your case or your appearance, be certain to notify the Clerk and the opposing party of your new address. You may efile a change of address. The form is available online at **tazewellcountyil.com**.
3. All small claims court sessions are open to the public. You may attend any of these courtroom proceedings to familiarize yourself with the procedures.

Note: The material contained herein is accurate as of February 1, 2019 and is subject to legislative and administrative changes thereafter.