



If you would like to learn more about *pro se* representations in Illinois small claims court, please contact:

Danya Shakfeh
dshakfeh@shakfehlaw.com
(630) 517-5529



How to Represent Yourself in Illinois Small Claims Court

Introduction

Small claims court is a jurisdiction that handles claims for \$10,000 plus costs and interest. It takes into account that smaller claims are not worth the long process of litigation and hiring attorneys. The abridged and simplified small claims process allows for pro se litigators (ie, those representing themselves without attorneys) to adequately represent themselves. This is especially helpful taking into consideration that attorneys and pro se litigants are held to the same standard. Accordingly, given that many individuals¹ in small claims courts are without attorneys, the legal system allows for more lax rules for all litigants.

Litigation could be divided into three phases: 1) the initial pleadings stage, 2) discovery, and 3) trial. The initial pleadings stage consists of the complaint, motions to dismiss, counter-claims, and amended pleadings. In non-small claims court, this could easily take a year or more. Discovery, in which the parties demand and exchange information and evidence, could easily take another 2 or 3 years if you take into account possible delays. Finally, if the case has not settled, there is a trial, which includes all the preparation and motions leading up to it. This too could take yet another year, if not more. It is obvious that lawsuits are a long and unpleasant process. If one were suing for less than \$10,000, the process would not be worth it. Small claims cases could be resolved in as little as two court appearances.

Step-By-Step Legal Guide

1. Drafting Your Complaint: Before anything, make sure you have a legal claim and meet their “elements.” If the plaintiff does not meet all the “elements” then the case may be dismissed. Make sure you specify in your facts according to each element for your claims. The most common claims in small claims court are 1) breach of contract, 2)

¹ In Illinois, corporations must have an attorney to sue, but do not need an attorney to defend themselves in small claims courts. See Illinois Supreme Court Rule 282(b).



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Illinois Consumer Fraud Act violations, 3) conversion. The elements of these claims are as follows:

- i. Breach of contract:
 - a. Offer,
 - b. Acceptance,
 - c. “Consideration” (ie, something given in exchange such as money), and
 - d. Damages - it is not enough that a defendant did not do what he said he would, but a plaintiff must have actually suffered damages such as losing money.
- ii. Illinois Consumer Fraud Act, 815 ILCS 505/1
 - a. A deceptive act or practice by the defendant,
 - b. The defendant intended that plaintiff rely on the deception,
 - c. The deception occurred in the course of conduct involving trade or conduct, and
 - d. Actual damages to the plaintiff proximately caused by the defendant.
- iii. Conversion
 - a. the plaintiff has a right to the property,
 - b. the plaintiff has an absolute and unconditional right to the immediate possession of the property,
 - c. the plaintiff made a demand for possession, and
 - d. the defendant wrongfully and without authorization assumed control, dominion, or ownership over the property.

Once you’ve determined whether and what legal claim you have, go to courthouse in the county that the defendant lives or where the subject of the suit took place. Have the name, address, and the amount you are claiming ready for the clerk to help you fill out the proper forms (summons and complaint). Once the case has been filed, you will be assigned a court date. Keep a copy of all documents for your records.

2. Serving the Summons. Once the documents are ready, you must serve the defendant (person or entity you suing). “Service of process” can either be through the sheriff or, in most counties in Illinois, via certified mail. Certified mail is less expensive and may



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even be easier.

3. Appearing in Court. The first court date is important and mandatory for both parties to appear. If the plaintiff does not appear, then the judge may dismiss the case. If the defendant does not appear, the judge may grant the plaintiff a default judgment. Unlike in non-small claims cases, a defendant does NOT need to file an answer, but may file a motion. At the first court date, the judge may either set a court date or grant a “continuance” if the parties are discussing settlement. A continuance is when another court date is set to determine what the next step of the case should be. Usually, in small claims case, a judge will not allow for more than one continuance.
4. Discovery. Illinois Supreme Court Rule 287 does not allow for discovery in small claims cases without the permission of the court. In other words, if you want the other party to provide documents to you before the trial, be sure to ask the judge and explain why it is necessary. Some judges give a timeline for exchange of documents without being asked, but this varies between judges.
5. Trial. On this day, be prepared to have all your arguments and documents along with any witnesses ready for the trial. Also be prepared to address any of the questions the judge may have or counter-arguments or defenses from the other party.

CONCLUSION

Representing oneself in small claims court may be manageable even without an attorney. While it is still best to consult an attorney regarding your case to explore other complicated legal matters that are not known to the typical non-attorney litigant, handling the actual court process may very be a task most people can handle on their own.