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This guide is intended to give a brief overview of some aspects of the procedure in Small Claims Court in Cook County, Illinois. This guide is not designed to be a comprehensive statement of the rules and procedures in that court and should not be relied upon as legal advice. Every situation has its own particular elements. If legal advice is required, consult with a competent attorney.

Navigating Small Claims Court in Cook County, Illinois

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At Lawyers for the Creative Arts (“LCA”), we are often contacted by artists in the midst of a commercial dispute. In some instances they have not been paid for their work; in others, work has been damaged. Partners in creative endeavors have a falling out leaving a dispute over money or property, or contracts are breached. Frequently, by the time a prospective client comes to LCA, attempts to resolve the matter amicably have failed and the client is forced to consider suing in court. This is a daunting prospect, conjuring up images of lengthy proceedings slowly winding their way through court for months if not years, requiring that the artist make a significant time commitment and have a high tolerance for stress. Meanwhile, attorney fees and court costs are busy eating up much of the amount at stake in the case.

For disputes involving \$10,000 or less, Illinois offers a more informal arena than the typical court proceeding. “Small Claims Court” is structured to allow parties to more quickly have their day in court, without the necessity of retaining an attorney. What follows is a brief walk through of the basics of litigating in Small Claims Court in Cook County, Illinois, the venue where LCA’s litigation clients may find themselves.

What is a “small claim”?

Illinois defines a small claim as a “civil action based on either tort or contract for money not in excess of \$10,000, exclusive of interest or costs.” Illinois Sup. Ct. Rule 281. Therefore, if you have a dispute involving \$10,000 or less B before considering

interest or court costs B the proper forum for the dispute is Small Claims Court. The Small Claims Court can order a judgment for money only. It cannot require a person or business to do something or to stop from doing something.

Who may file a lawsuit in Small Claims Court?

Any individual or corporate entity (such as a corporation, partnership, etc.) doing business in Illinois can sue or be sued in Small Claims Court.

Do I need an attorney to file a lawsuit in Small Claims Court?

Persons 18 or older may represent themselves in Small Claims Court. Persons younger than 18 must be represented by an attorney. Because the amounts at stake are often less than the costs of retaining an attorney and the procedures may be less formal than in other courts, many persons elect to represent themselves. However, parties may retain attorneys to appear on their behalf and if the opposing party is represented by an attorney, it may improve your chances of winning to retain one.

The rules for corporations are slightly different. A corporation cannot file a small claims lawsuit unless it is represented by an attorney. However, a corporation need not retain an attorney to defend it when sued in Small Claims Court, and when sued may appear in court through any corporate officer, director, manager, department manager or supervisor.

Where should I file my small claims case?

Illinois law requires that a lawsuit be filed in the county in which the defendant resides **or** where the event that is the basis for the lawsuit occurred. If either of those is Cook County, you may file in Cook County. If you file your claim in the wrong county, you will not automatically lose. The case will likely be dismissed so you can refile in the proper county, or transferred to the correct court. Either way, filing in the wrong place will result in delay and added costs.

Once you have determined that Cook County Small Claims Court is the proper court for your claim to be heard, you should go to the clerk's office to file your claim. The Circuit Court of Cook County is divided into six districts, located at:

District 1 -- Richard J. Daley Center, 50 West Washington, Room 602, Chicago, IL 60602, (312) 603-5031.

District 2 -- 5600 Old Orchard Rd., Rm. 136, Skokie, IL 60077, (847) 470-7250.

District 3 -- 2121 Euclid, Rm. 121, Rolling Meadows, IL 60008, (847) 818-3000.

District 4 -- 1500 Maybrook Dr., Rm 236, Maywood, IL 60153, (708) 865-6040.

District 5 B 10220 S. 76th Ave., Rm. 121, Bridgeview, IL 60455, (708) 974-6500.

District 6 B 16501 S. Kedzie Pkwy., Rm. 119, Markham, IL 60428, (708) 210-4551.

Each District serves different Cook County cities and villages. The District where the Defendant lives or where the events at issue took place should be the District in which the case is filed. Contact the clerk of the District nearest you to determine the proper District given the facts of your case. Each District's office is open 8:30-4:30 Monday through Friday. Filing in the wrong District will result in a transfer to the correct District.

How do I file a lawsuit in Small Claims Court?

A small claims action is commenced by paying the clerk of the court a filing fee and filing a "summons" and "complaint." For small claims lawsuits filed in Cook County, the web site for the Clerk of the Circuit Court of Cook County provides forms of complaints and summonses that can be filled out and filed. See <http://198.173.15.34/?section=FormsPage> (in the "Search by Division" section, click "small claims" to reveal the selection of small claims forms). Alternatively, forms are available from the Small Claims Court clerk. Be sure to make enough copies of the summons and complaint to file an original, serve one on each defendant, and maintain extras for your files.

The complaint must include (1) your name, address and telephone number; (2) the name and address of the person or entity you are suing (the "defendant"); (3) the nature of your claim against the defendant, including dates and other relevant information; and (4) the amount of money damages you are claiming. Sup. Ct. Rule 282(a).

Persons filing small claims lawsuits ("plaintiffs") should be sure to use the correct legal name of the persons or entities being sued ("defendants"). Correct entity names may be available from the Secretary of State's Office. Similarly, if you are suing the owner of an unincorporated business operated in Cook County under an assumed name B such as a sole proprietorship, general partnership, or professional services corporation B you can find out the name of the owner by checking the assumed name registrations at the Office of the Cook County Clerk. Note that the defendant's address may be his/her place of residence, or place of business or regular employment.

If the small claim arises out of a contract or another type of document, copies of the contract or document must be attached to the original and all copies of the complaint,

unless the plaintiff attaches an affidavit stating that it is unavailable. Sup. Ct. Rule 282. Copies of other important documents, such as bills or receipts also may be attached.

The filing fee and complaint must be accompanied by a summons. Sup. Ct. Rule 283. The summons must require each defendant to file in court an “appearance” on a day specified in the summons, which must be between 28 and 40 days of the issuance of the summons. Circuit Court of Cook County Rule 1.6.

The completed complaint, summons, and fee must be presented for filing in the office of the Small Claims Court clerk. If you want a jury trial, you must indicate this to the clerk. An additional fee is charged if you demand a jury.

If your complaint and summons are in order and the proper fee is paid, the clerk will accept your filing and assign your case a “case number.” You should make sure to note the case number, which will be referred to in all dealings with the clerk, court staff, or sheriff.

How is the defendant given notice of the small claims lawsuit?

Once the complaint and summons are filed, they must be “served” on the defendant. In Cook County, a small claims summons and complaint may be served by mail. This is handled through the clerk’s office. At the time the summons and complaint are filed, you may pay the clerk a fee of \$2 per defendant served plus the cost of mailing and furnish the clerk an original and one copy of the summons containing an affidavit stating the defendant’s last known mailing address, and one copy and an original of the complaint. The clerk will then mail the forms, certified mail, return receipt requested. The return receipt when delivered back to the clerk, if it shows that the summons and complaint were delivered at least 3 days prior to the date the defendant is ordered in the summons to file an appearance in court, constitutes proof of service.

Alternatively, if the defendant resides in Cook County, you may choose to have the Sheriff of Cook County serve the summons and complaint on the defendant by hand. If so, for each defendant to be served leave with the Sheriff’s office one original and two copies of the summons, along with one copy of the complaint. If the defendant resides elsewhere, you must arrange to deliver the requisite original and copies of the summons and complaint to the Sheriff of the appropriate county and state.

How must a defendant respond when served with a summons and complaint in a small claims lawsuit?

If you are served with a small claims complaint and you neither deny the claims nor the amount of damages the plaintiff seeks, you should contact the plaintiff and attempt to resolve the matter out of court. Otherwise, you can simply admit the claims and have a judgment entered against you. The former course is preferable, to avoid the public record of a judgment against you.

If you dispute the claim or the amount of damages requested, you must respond to the complaint by filing an "Appearance." The Summons will specify a "return date" and the defendant must on that day file the written Appearance and pay an appearance fee with the Clerk of the Court at the address checked on the Summons. Appearance forms are available either at the clerk=s office or at <http://198.173.15.34/?section=FormsPage> (in the "Search by Division" section, click "small claims" to reveal the selection of small claims forms). The defendant also may demand a jury if the plaintiff has not done so, and pay the applicable fee.

The case will not be heard in court on the return date. When the defendant files the Appearance and pays the fee, the clerk will give notice of the first court date. It is on that day that the defendant must appear in court.

If the defendant files an Appearance form, there is no need to file an answer to the complaint. In such a case, the allegations against the defendant in the complaint are presumed to be denied and the defendant is free to prove any defense to the charges. Sup. Ct. Rule 286.

If the defendant fails to file an appearance and pay the required fee on the return date, a judgment by default may be entered for the relief requested in the complaint.

Can a defendant assert a claim against the plaintiff or anyone else?

If you are sued in small claims court and you claim that the plaintiff owes you money as a result of the same transaction or events that are raised in the complaint, you may file a "counterclaim" against the plaintiff. This is done by filing a small claims complaint and delivering it, along with the filing fee, to the clerk. A summons is not necessary for a counterclaim, but a copy must be served on the plaintiff, either by mail or by hand, with proof of service. The plaintiff=s complaint and defendant=s counterclaim will be heard at the same hearing.

If you have been sued and you believe that a third party bears some or all of the liability claimed by plaintiff, you may also file a "third party claim" against that party. This requires a small claims summons and complaint filed in the manner set forth above. You should use the same caption and case number as in the complaint against you, and simply add to the caption the fact that you are a "third party plaintiff" and that the person or entity you are suing is a "third party defendant." The clerk

should be able to assist you and answer any questions.

How will I know if the Complaint has been served on the defendant and if the defendant has appeared?

Once the defendant files the Appearance form, the defendant must send a copy to all parties named in the case (or their attorneys) either by regular mail, fax, or personal delivery. If you are a plaintiff and have not received a copy of a defendant's Appearance form within a few days of the return date, and in no event more than a day or two before the scheduled court date, call the clerk of the court to determine whether an Appearance has been filed. Even if the defendant has missed the deadline, you should still be prepared to present your case at the date set for a court appearance in order to obtain a default judgment.

How should the parties prepare for a small claims court hearing?

In preparing your case, you should keep in mind that the goal is to present proof that is more convincing than your opposition's. The Illinois Attorney General's Office recommends the following preparatory steps:

- X Make a detailed list of what happened so the facts are clear in your mind.
- X Gather all documents, notes, receipts, pictures, or other physical evidence that you need to prove your claim.
- X Determine if any witnesses will be helpful to your case and, if so, ask them to appear at your trial. If they will not voluntarily appear, you may choose to "subpoena" their attendance at the trial. Subpoena forms are available either at the clerk's office or at <http://198.173.15.34/?section=FormsPage> (in the "Search by Division" section, click "small claims" to reveal the selection of small claims forms). Note that written statements from witnesses may not be admitted at trial. If a witness is crucial to your case, that witness must be in court.
- X If you are suing on the basis of defective merchandise or faulty services, it may be helpful to have an expert witness testify on your behalf at trial. In a case where an expert might be useful, you should have the expert evaluate the facts of your case before trial, and if the expert agrees with your position, make sure he or she is available on the date of the trial.

In addition, since your court appearance will involve an oral presentation of your story,

it is helpful to go through your presentation several times in advance, until you feel comfortable. It also may be useful to have someone not familiar with the facts of the dispute listen, ask questions, and then critique your presentation. This person can tell you if your explanations are sufficiently clear, forceful and convincing, and can help prepare you for difficult questions that the judge or your adversary may ask.

If you have never appeared in small claims court, you may benefit from attending court hearings in other cases as part of your preparation, just to get a sense of how the trials are conducted. The clerk's office should be able to tell you when trials are scheduled.

Note that the usual forms of "discovery" in civil lawsuits B depositions, written interrogatories, or requests for the production of documents B are not available in small claims actions without first obtaining a court order permitting them. You should gather the necessary materials yourself, and should not expect that you will be able to obtain them from your adversary.

What happens when the parties appear in court?

Be sure to arrive at the courthouse sufficiently early to find the correct courtroom and organize your materials. The court may have other matters scheduled at the same time, in which case you may have to sit through other proceedings waiting for your case to be called. Take this time to observe courtroom procedures and etiquette.

When your case is called, the judge will typically ask the plaintiff briefly to summarize the nature of the lawsuit and then ask the defendant if they admit or deny the allegations made and/or the amount of damages that the plaintiff is seeking. If the defendant admits liability and agrees to a damages amount, judgment will be entered for the plaintiff.

If the defendant denies the claim or disagrees with the amount of damages that the plaintiff claims to be entitled to, then the court will set the case for trial. The trial may occur immediately, or be set for later in the day or on some future date. Both parties should prepare for this initial hearing as though the trial will occur on that day. That means bringing any evidence or witnesses to the hearing and being prepared to argue your case. While the court may grant a party's request for "continuance" to another date if that party is not ready to proceed on the hearing date, the court has the discretion to deny such a request.

One thing is clear. If you fail to attend on the date of the hearing, the court may dismiss your case (if you are the plaintiff), or enter a judgment against you (if you are the defendant). This is not something you can miss with impunity.

What happens at the trial?

The plaintiff is given the first chance to present his or her case. This means telling in an orderly fashion the plaintiff's side of the story, including presenting any evidence and/or witnesses. When the plaintiff has finished, the defendant will then have the opportunity to present his or her side of the story, including evidence and witnesses.

The judge may choose to relax some of the formality typically associated with trials, and may ask questions of the parties or witnesses. After both sides have presented their cases, a decision will be rendered. If either party has demanded a jury (and paid the proper fee), jurors will make the decision. Otherwise, the judge will decide.

What happens if I win?

If you are the plaintiff and you win the lawsuit, a "judgment" will be entered in your favor and against the defendant in the amount awarded by the judge or jury. A judgment is a document signed by the judge and given an official court stamp that states the amount you are owed. Your opponent is not obligated to pay you immediately. However, interest begins to accrue immediately at an annual rate set by statute.

Obtaining a judgment in your favor and actually collecting the amount owed from the defendant are two separate things. If after 30 days you have not been paid and the defendant has not filed a post-judgment motion or appeal (see below), you may bring what are known as "collection proceedings." Since this area of the law is complex, you may want to retain an attorney to assist you; collection attorneys typically charge a percentage of the amount they collect. There is a Collection Advice Desk at Room 1401 of the Richard J. Daley Center, 50 West Washington, Room 602, Chicago, IL 60602. It provides tools and advice to individuals trying to collect on judgments, and is open from 9:00 a.m. to noon, Monday through Friday.

If you are the defendant and you win, judgment will be entered in your favor indicating the dismissal of the claim against you. You also may seek from the court your "costs," such as filing fees. In certain situations attorneys' fees are also recoverable.

What happens if I lose?

If you are the plaintiff and you lose the lawsuit, your complaint will be dismissed and you will not recover any damages. The court may also order you to pay the costs or attorney's fees incurred by your adversary. If you lost because your evidence was not sufficiently convincing, then it is unlikely you will be able to raise the matter again in court. On the other hand, if you lost due to a "procedural" mistake (for example you did

not properly serve the defendant), it may be possible to correct the error and seek another hearing.

If you are the defendant and you lose, a “judgment” will be entered against you in the amount awarded by the judge or jury. A judgment is a document signed by the judge and given an official court stamp that states the amount you owe the plaintiff. While you are not obligated to pay on the spot, interest begins to accrue immediately at an annual rate set by statute.

The judge may ask you to agree to a payment plan or schedule. You should be careful about this. If such a schedule is entered in a court order, then any violation of the schedule would be a violation of a court order, meaning you could be held in contempt of court.

If your financial situation makes it impossible to satisfy the judgment, you should let the judge and the plaintiff know and seek an accommodation. If you are ordered to make payments notwithstanding any hardship, you should be aware of “exemption rights,” which exclude certain property and income from judgment for persons below a certain income level. The nature of exemption rights are beyond the scope of this guide; you should seek information from consumer or legal aid organizations familiar with Illinois law, or the Collections Advice Desk at Room 1401 of the Richard J. Daley Center, 50 West Washington, Room 602, Chicago, IL 60602.

What can I do if I think the decision was wrong?

Whether you were the plaintiff or the defendant, if you think that the decision reached at the trial was wrong, you can either ask the judge to “reconsider” the decision, or appeal the decision to a higher court. Either must be done within no more than 30 days from the date of the judgment.

To obtain reconsideration, you must file a Notice of Motion and a Motion to Reconsider before the judge who heard the case and serve copies of the Notice and Motion on your adversary. The Notice of Motion should tell your adversary the date that the clerk has scheduled for the motion to be heard in court. At the hearing on the motion, you should be prepared to explain why the prior decision was wrong. If the judge grants your motion, the matter may be set for another trial. If the judge denies your motion, then you may file an appeal.

If you choose to file an appeal, either directly after the trial or after an intervening motion to reconsider has been denied, you must file a notice of appeal with the First District Appellate Court in Chicago, within 30 days of the decision you are appealing from. If you filed a motion to reconsider and lost that motion, you have 30 days from the date of that decision. You may want to consult an attorney about whether to

appeal and, if you choose to do so, to assist in the appeal.

Pro Se Help Desk

Individuals representing themselves *pro se* in court (*pro se* is Latin for “in one's own behalf”) may visit the Pro Se Help Desk for free assistance throughout their cases in interpreting and filling out court-required documents. Trained staff members also advise pro se plaintiffs and defendants of any required court fees and provide explanations of how to follow the judge's orders. The staff of the Pro Se Help Desk does not provide legal advice.

The pro se help desk is located in Room 602, Richard J. Daley Center, 50 West Washington, Chicago, IL, 60602, (312) 603-5031. It is open **8:30 a.m. to 4:30 p.m., Monday through Friday. The phone number is (312) 603-5626.**

RESOURCES

Clerk of the Circuit Court of Cook County Website, <http://198.173.15.34/>

*Small Claims Court in Illinois*⁸, The Self Help Legal Center, Southern Illinois University School of Law, Jan. 21, 2006.

How to Use Lake County, Illinois= Small Claims Court, Hon. Thomas Lang, Associate Judge, June 15, 2000, www.co.lake.il.us/circlk/scguide.asp.

Small Claims Court, Things You Should Know About . . ., Illinois Attorney General, www.ag.state.il.us/consumers/smlclaims.html.

Illinois Supreme Court Rules.

Local Rules for the Circuit Court of Cook County.

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