

# PART 7.00 SMALL CLAIMS

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## 7.01 FORMS OF SUMMONS AND COMPLAINTS

- (a) An approved summons form provided by the Clerk of the Circuit Court, substantially in the form set forth in Supreme Court Rule 101(b), shall be used in any Small Claims action.
- (b) Small Claims actions may be commenced by filing a complaint on forms supplied by the Clerk of the Circuit Court. The complaint shall state the amount of and the basis for plaintiff's claim, giving dates and relevant facts.
- (c) If the claim is based on a written instrument, a copy thereof must be attached to the original and all copies of the complaint. If the written instrument is not available to the plaintiff, an affidavit so stating shall be attached to the complaint.
- (d) A copy of the complaint and Small Claims Summons (along with any written instrument required to be attached) shall be served upon each defendant by any of the methods allowed by law including certified or registered mail in compliance with Supreme Court Rule 284.
- (e) Copies of complaints served upon defendants shall have attached thereto two blank "Written Appearance Forms" which may be used by the defendants.
- (f) The Small Claims Summons, when issued, shall contain a NOTICE TO DEFENDANT setting forth the following language:

*If you wish to contest this claim, you must do the following:*

*Pay the statutory appearance fee and file a written appearance (forms may be obtained at the office of the Clerk of the Circuit Court) on or before the day and time specified above for your appearance, hereinafter called the return day. You must mail or otherwise deliver to the opposing party a copy of your appearance. Then on the return day the sitting judge shall, in open court, set a time and date for trial. Each party is responsible for learning the time and date of the trial.*

*If you do not wish to contest this claim, you need not appear in person or file a written appearance, and a judgment will be entered against you on the return day, for the amount claimed by the plaintiff in the complaint plus court costs.*

## 7.02 DEFAULT

If a defendant who has been duly served with summons fails to appear on or before the day and time designated as the return day, the court may take the allegations in the complaint as admitted by said

defendant and upon motion and without notice enter a judgment by default against defendant for the amount claimed plus court costs. Such judgment may be entered on the return day or any time thereafter. Also, the court may, in its discretion, require the presentation of evidence and set the case down for "prove up".

### **7.03 CONTESTED**

After service of summons, a defendant desiring to contest the plaintiff's claim must do one of the following:

(a) File a WRITTEN APPEARANCE in the main office of the Circuit Court on or before the time and date of the return day stated in plaintiff's summons.

(b) Appear in person before the court on the return day.

In either event, on the return day the sitting judge shall, in open court, set a time and date for trial.

If all parties appear pro se (representing themselves) on the return date, they will be offered the opportunity to voluntarily participate in the Small Claims Mediation Program (See Rule 7.08 and 20.07) prior to assigning the case a trial date.

### **7.04 MOTIONS AND SPECIAL APPEARANCES**

Motions shall be noticed and heard in accordance with Part 2.00. Any motion shall be noticed for a hearing on a date prior to the trial date. If, with leave of court, a motion is scheduled for hearing on the trial date, the parties shall be prepared to proceed to trial immediately after hearing of said motion.

### **7.05 REFERRAL TO ARBITRATION WHEN A JURY IS DEMANDED**

In the event that any party files a jury demand in a Small Claim action, that fact shall be brought to the attention of the judge presiding by the party filing the demand, and the case shall be referred to Court-Annexed Mandatory Arbitration for a hearing before a trial is scheduled.

### **7.06 DISMISSAL FOR WANT OF PROSECUTION**

Any case which remains inactive for 90 days may be dismissed for want of prosecution on the court's own motion, without notice.

### **7.07 COSTS IN SMALL CLAIMS**

If the prevailing party requests an award of costs other than those evidenced of record at the time of the award, said party shall, at the time of award or judgment, tender an affidavit individually listing each such cost and the amount sought together with a statement by affiant that those costs have been paid by affiant.

### **7.08 SMALL CLAIMS VOLUNTARY PRO SE MEDIATION**

a) **Purpose.** The bench and bar of McHenry County, having recognized the success of court annexed alternate dispute programs, and recognizing a particular need in the area of small claims cases

wherein parties represent themselves, adopt these rules to assist the litigants in small claim disputes and to maximize efficiency of court time in the small claims system.

(b) **Actions Eligible.** This program will be available to small claims cases in which all parties appear pro se at the initial return date. In addition, this service may be offered to any other small claims case which the presiding judge feels might be appropriate and parties volunteer to participate. This program shall be strictly voluntary and shall be offered to the litigants as a service. No litigant is required to participate.

(c) **Scheduling.** In McHenry County, with the assistance of the Clerk's office, cases filed by pro se plaintiffs will automatically be assigned a return date on the second or fourth Thursday of each month. The McHenry County Bar Association will make every effort to provide volunteer mediators on those dates.

(d) **Return Date Procedure.** On the second and fourth Thursday of the month, the presiding judge of the small claims division will confirm that volunteer mediators are available. The judge will then provide a brief explanation to litigants about the availability of the program and its voluntary nature. He or she will then call the cases filed by pro se plaintiffs. In cases deemed appropriate for the mediation program, the judge will offer that option and will send participating parties to the office of the court administrator for immediate mediation. At that point, the volunteer mediators will conduct settlement discussions (in the jury rooms connected to the arbitration center, if available). Upon completion of the mediation session, the mediator will send the parties back to the courtroom with appropriate documents for filing.

(e) **Mediator Training/Qualifications.** The approved list of mediators shall be maintained by the presiding judge of the small claims division. To qualify for the list of mediators, a volunteer must be a member of the McHenry County Bar Association and must have completed basic training to act as a mediator. The training shall be informal, and shall be conducted by one of the experienced mediators on the list. When in the judgment of the trainer the candidate is qualified, he or she will present the name of the trainee to the presiding judge for final approval.

The mediators will be scheduled to participate by a member of the Civil Practice Committee of the McHenry County Bar Association, designated as the "mediation coordinator." This coordinator shall be elected by the Civil Practice Committee and may be rotated from time to time as the members of that committee see fit.

(f) **Forms.** The Civil Practice Committee shall provide basic forms for the administration of this program. These forms will include a "Confidentiality Agreement" (patterned after the confidentiality agreement used in the major civil case mediation program), a form "Agreement" to be filed in the event that a settlement agreement is reached, and two court orders. One court order will dismiss the case with prejudice, but allow the court to retain jurisdiction for a period of time to enforce the settlement. The second order will acknowledge that the parties did not settle the case at mediation and will contain a blank space for the judge to fill in a trial date.

(g) **Statistics.** Commencing with formal adoption of these rules, the Arbitration Administrator will maintain statistics indicating the number of cases sent to mediation and the results of the mediation process. These statistics will be reviewed periodically by the presiding judge of the small claims division to determine the effectiveness of the program. The presiding judge of the small claims division may, at any time, suspend or discontinue this program should he or she feel it is no longer effective or necessary.