

Kane County Local Rule

ARTICLE 9: SMALL CLAIMS AND FORCIBLE ENTRY/DETAINER

9.00 APPLICABILITY OF RULES

- (a) Rules contained in this Article 9 shall be applicable to Small Claims (SC) cases and Law Medium (LM) cases.
- (b) SC and LM cases shall also be subject to applicable Civil Division rules, including but not limited to those contained in Article 6, as well as Illinois Supreme Court Rules and the Illinois Code of Civil Procedure.

9.01 FORM OF SUMMONS AND COMPLAINT

- (a) A summons form provided by the Circuit Court Clerk substantially in the form set forth in [Supreme Court Rule 101\(b\)](#), shall be served upon each defendant together with a copy of the complaint by any of the methods allowed by law. In SC cases only, service may be made by certified mail by the Circuit Court Clerk pursuant to the requirements of [Supreme Court Rule 284](#).
- (b) The form of complaint to be used in Small Claims actions shall provide for a verified statement of claim setting forth the information requested by [Supreme Court Rule 282\(a\)](#). Small Claims complaint forms shall be provided by the Circuit Court Clerk.
- (c) The form of complaint to be used in LM Forcible Entry and Detainer actions shall provide for a verified statement of claim setting forth the address of the premises and the amount of rent due and owing to the plaintiff. [Forcible Entry and Detainer complaint forms](#) shall be provided by Circuit Court Clerk.
- (d) If the claim in either a Small Claims (SC) or Forcible Entry and Detainer (LM) is based on a written instrument, a copy of such written instrument, so much as relevant, must be attached to the original and all copies of the complaint in compliance with 735 ILCS 5/2-606. Voluminous written instruments such as homeowners' associations' declarations and covenants, if publicly recorded, will not be required to be attached in their entirety, provided relevant portions are attached, if available. If the written instrument is not available to the plaintiff, an affidavit or certification pursuant to [735 ILCS 5/1-109](#) so stating shall be attached to the complaint.

9.02 SCHEDULING RETURNS, CITATIONS, MOTIONS, ARBITRATIONS, AND TRIALS

- (a) Motions shall be noticed and heard in accordance with Article 6 Sections 6.10 through 6.13. Motions, if any, 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 the motion.
- (b) Return dates for summonses and citations to discover assets shall be scheduled for the first date determined by the Circuit Court Clerk to be available. Attorneys shall not schedule cases on Fridays without permission of the Court. Self-represented litigants

Kane County Local Rule

shall not schedule cases on Tuesdays, Wednesdays, or Thursdays without permission of the Court.

- (c) All motions shall be scheduled for the motion call on the first date determined by the Circuit Court Clerk to be available. Attorneys shall not schedule cases on Fridays without permission of the Court. Self-represented litigants shall not schedule cases on Tuesdays, Wednesdays, or Thursdays without the permission of the Court.
- (d) All bench trials shall be set by court order for a date and time determined by the Court. All jury trials shall be set by court order, only after the parties have completed mandatory arbitration pursuant to Local Rule 9.03.
- (e) Motions must be scheduled by the movant or movant's attorney using the scheduling procedure and guidelines in effect at the Circuit Court Clerk's office. Motions not scheduled according to the aforesaid procedure will not be heard.

9.03 JURY DEMANDS IN SMALL CLAIMS

- (a) Pursuant to [Supreme Court Rule 285](#), all SC cases in which a jury demand has been filed shall be subject to Mandatory Arbitration under Article 11 of these rules.
- (b) Parties in any SC case in which a jury demand has been filed shall comply with Article 11 of these rules and with disclosure and discovery procedures set forth in [Supreme Court Rules 90\(c\)](#) and [222](#).
- (c) The Court shall assign an arbitration hearing date before a trial date is scheduled. Any motions as well as case management conferences, post-hearing status, and proceedings after a rejection of the arbitration award shall continue to be heard by the judge assigned originally to the SC case.

9.04 MOTIONS AND ORDERS

- (a) All motions must be fully titled to include the relief sought. Non-form orders must be similarly titled. Orders which are agreed must so state.
- (b) All orders, including pre-printed form orders, shall be fully completed and must clearly state the specific relief granted. The presence or absence of the plaintiff or defendant and/or counsel appearing on their behalf must be indicated on any order presented. The name of the person preparing the order shall also appear.
- (c) Neither a plaintiff nor plaintiff's counsel may represent the defendant(s). Orders presented by the plaintiff or plaintiff's counsel in absence of the defendant or defendant's counsel must be either on motion of the plaintiff or titled as agreed.
- (d) When cases are cited to the court in a written motion or pleading, or in oral argument, complete and correct copies of the cases shall be presented to the Court.

Kane County Local Rule

- (e) Motions for turnover of garnished sums or withheld wages must be presented to the Court on notice to the judgment debtor and garnishee or employer.

9.05 APPEARANCE AND ANSWER

- (a) Defendants in SC and LM actions must appear at the time and place specified in the summons, but shall not be required to file a written answer unless ordered to do so by the Court.
- (b) When no answer is ordered, the allegations of the complaint shall be deemed denied and any defense may be proved as if it were specifically pleaded.
- (c) Although a written answer to the complaint may not be required by rules, defendants wishing to contest the complaint are not excused from the requirement to file a written appearance on or before the return date of the summons, or within such additional time thereafter as may be granted by the court for good cause shown.
- (d) Parties who are indigent may submit an application to the court to sue or defend without the payment of filing fees. Forms for such application are available through the [Office of the Circuit Court Clerk](#) or on the internet at <http://www.illinoiscourts.gov/forms/approved/default.asp>.

9.06 DEFAULT

If a defendant who has been duly served with summons fails to appear on the return date, the Court may enter judgment for plaintiff upon a verified complaint, or if the complaint is not verified, upon proof by affidavit or certification pursuant to [Code of Civil Procedure Section 1-109](#) or sworn testimony and other evidence of damages.

9.07 SMALL CLAIMS: DISCOVERY; FILING OF COUNTERCLAIMS, CROSS-CLAIMS, INTERVENOR SUITS AND THIRD PARTY COMPLAINTS

- (a) Where discovery is a matter of right or where a party has been granted leave to engage in discovery pursuant to [Supreme Court Rules 287](#) or [222](#), such discovery shall be automatically cut off fifteen (15) days prior to trial or arbitration.
- (b) No counterclaim, cross-claims, intervenor suits or third party complaints may be filed within thirty (30) days prior to trial, except upon order of court and for good cause shown.

9.08 CONTINUANCES

- (a) There shall be no telephone continuances.
- (b) There shall be no continuances for status of payment, except by court order.
- (c) Motions may be continued by agreement. The judge must approve the continuance date. No motion shall be continued, for a period of greater than ninety (90) days except for

Kane County Local Rule

good cause shown. The order granting the continuance must provide that any other date for which the motion is scheduled is stricken.

- (d) Trials will not be continued except upon motion brought in advance of the trial date and then only for good cause shown. However, if all parties (non-attorneys) are present in open court and request a continuance, the Court shall consider the same. Orders setting a new date for trial shall include language striking the case from the trial call for the previously set date.
- (e) Cases settled in advance of the time set for trial may be continued by agreement for no more than thirty (30) days, for the entry of judgment or dismissal. One or both parties or counsel representing them must appear before the court to obtain such continuance. All matters so continued shall be scheduled for 9:00 a.m. on a date approved by the judge. Orders granting such a continuance must include language striking the case from the call on the date set for trial. The failure to present an order of judgment or dismissal on the continuance date will result in an automatic dismissal.

9.09 SERVICE OF SUMMONS, CITATIONS

- (a) On the return of an initial summons or citation to discover assets, if service of process has not been made on the named defendant(s) or citation respondents(s), the plaintiff or plaintiff's counsel must appear and submit an order continuing the matter for a date certain for either return on an alias summons or citation or for a status date to allow location of the party to be served. If the plaintiff or plaintiff's counsel fails to appear, the matter will be dismissed.
- (b) The number of alias summonses or citations to be issued shall be left to the discretion of the Court based upon good cause shown by the movants.
- (c) Nothing in this provision shall be construed to change or otherwise limit the power of the Court to dismiss matters pursuant to other Local Rules or applicable Supreme Court Rules.