

ARTICLE 16: SMALL CLAIMS

16.00 RESERVED

16.01 FORM OF SUMMONS AND COMPLAINT

(a) A summons form provided by the Clerk of Court 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.

(b) The form of complaint to be used in Small Claims Actions shall provide for a verified statement of claim setting forth the elements provided for in Supreme Court Rule 282(a). Small Claims Complaint forms shall be provided by the Clerk of the Court.

(c) The form of complaint to be used in 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 the Clerk of the Court.

Amend. by Gen. Order 92-16, eff. Sept. 18, 1992 ; Gen. Order 08-04, eff. May 5th, 2008

16.02 SCHEDULING RETURNS, CITATIONS, MOTIONS, ARBITRATIONS AND TRIALS

(a) All motions for turnover orders, returns of summons and citations shall be scheduled at 9:00 a.m. on the first date determined by the Circuit Clerk to be available. Attorneys shall not schedule cases on Thursdays or Fridays without the permission of the Court. Pro Se Litigants shall not schedule cases on Tuesdays, Wednesdays, or Thursdays without the permission of the Court.

(b) All motions (other than motions for turnover orders) shall be scheduled at 10:30 a.m. on the first date determined by the Circuit Clerk to be available. Attorneys shall not schedule cases on Thursdays or Fridays without the permission of the Court. Pro Se Litigants shall not schedule cases on Tuesdays, Wednesdays, or Thursdays without the permission of the Court.

(c) All bench trials shall be set by Court order for 1:00 p.m. unless the Court directs otherwise.

(d) Motions may be heard by the Judge presiding in Small Claims court, unless the facts and circumstances require it to be heard by some other Judge to whom the case has been assigned. Once a case has been set for trial and until judgment is entered, all motions shall be heard by the trial Judge.

(e) Motions must be scheduled by the movant or movant's attorney by calling the Small Claims/Law Medium Team of the Circuit Clerk's Office. Motions not scheduled

according to the following procedure will not be heard unless the respondent or respondent's attorney appears in court pursuant to the notice of motion.

(f) Jury Demands

- (1) All small claims cases in which a jury demand has been filed, pursuant to Supreme Court Rule 285, shall be subject to Mandatory Arbitration under Article 11 of these Rules.
- (2) The Court shall assign an arbitration hearing date before a trial date is scheduled.

Amend. by Gen. Order 92-16, eff. Sept. 18, 1992 ; Gen. Order 08-04, eff. May 5th, 2008

16.03 MOTIONS, PETITIONS AND ORDERS

- (a) All motions and petitions 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) Where the cases are cited to the Court in a written motion or pleading, or in oral argument, a complete and correct copy of the case shall be presented to the Court.
- (e) Motions for turn over of garnished sums or withheld wages must be presented to the Court on notice to the judgment debtor and the garnishee or employer.

Amend. by Gen. Order 92-16, eff. Sept. 18, 1992 ; Gen. Order 08-04, eff. May 5th, 2008

16.04 APPEARANCE AND ANSWER

- (a) Pro Se defendants in Small Claims [Sup. Ct. Rule 286] and Forcible Entry and Detainer [Sup. Ct. Rule 181(b)(2)] actions shall not be required to file a written answer or appearance, unless ordered to do so by the Court.

Amend. by Gen. Order 92-16, eff. Sept. 18, 1992 ; Gen. Order 08-04, eff. May 5th, 2008

16.05 SMALL CLAIMS: DISCOVERY; FILING OF COUNTERCLAIMS, CROSSCLAIMS, 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 Rule 287, such discovery shall be automatically cut off 15 days prior to trial.

(b) No counterclaim, crossclaims, intervenor suits or third party complaints may be filed within 30 days prior to trial, except upon order of court and for good cause shown.

Amend. by Gen. Order 92-16, eff. Sept. 18, 1992 ; Gen. Order 08-04, eff. May 5th, 2008

16.06 CONTINUANCES

(a) There shall be no telephone continuances.

(b) There shall be no continuances for status or payment, except by Court order.

(c) Motions may be continued by agreement. Either the Clerk or the Judge must approve the continuance date. No motion shall be continued, however, for a period greater than 90 days except for 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; provided, however, that 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) Motions to continue a trial date may be filed by litigants or attorney's representing litigants in Small Claims cases.

(f) Cases settled in advance of the time set for trial may be continued by agreement for 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 Clerk or 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.

Amend. by Gen. Order 92-16, eff. Sept. 18, 1992 ; Gen. Order 08-04, eff. May 5th, 2008

16.07 SERVICE OF SUMMONS, CITATIONS

(a) On the return of an initial summons or citation to discover assets, if service of process has not been had on the named defendant(s) or citation respondent(s), the plaintiff or plaintiff's counsel must appear and submit an order continuing the matter for a date certain 6 months from the date the original complaint was filed or citation issued and

thereupon an alias summons or citation may issue. If the plaintiff or plaintiff's counsel fails to appear, the matter will be dismissed.

(b) If any alias summons or citation so issued is returned unserved prior to the expiration of the 6 months, neither plaintiff nor plaintiff's counsel shall be required to appear in Court on the date set for return. Provided that the case is not scheduled for any other reason, it will be passed.

(c) If service has not been had upon the named defendant(s) or citation respondent(s) within 6 months, the case will be automatically dismissed unless the plaintiff or plaintiff's counsel appears in court on the 6 month date and can show good cause why the matter should not be so disposed. Nothing in this provision shall be construed to change or otherwise limit the power of the Court to dismiss matters pursuant to Local Rule 1.27

Amend. by Gen. Order 92-16, eff. Sept. 18, 1992 ; Gen. Order 08-04, eff. May 5th, 2008

16.08 DEFAULT JUDGMENTS; DISMISSALS FOR WANT OF PROSECUTION

(a) Failure of a served defendant or defendant's counsel to appear on the return date or at the time of trial will result in default. Proof of damages may be made by a verified complaint, affidavit, or such proof of claim as the court may determine to be sufficient. Verified complaints and affidavits must be signed by the plaintiff or plaintiff's agent, not by the plaintiff's attorney. Matters may be continued once for proof of damages. If the plaintiff or plaintiff's attorney is unable to prove damages after one continuance, a judgment will not be granted, except upon motion with notice to the defendant(s).

(b) Where a defendant or defendant's counsel appears on the return date or at the time of trial and the plaintiff or plaintiff's counsel fails to appear, the matter will be dismissed.

(c) In the event the Court determines it appropriate to reinstate a complaint previously dismissed or vacate any default judgment, the Court shall consider sanctions.

Amend. by Gen. Order 92-16, eff. Sept. 18, 1992 ; Gen. Order 08-04, eff. May 5th, 2008

16.09 CITATIONS TO DISCOVER ASSETS

(a) In addition to the requirements set forth in 735 ILCS 5/2-1402 of the Code of Civil Procedure and Illinois Supreme Court Rule 277, the following Rules of Court are hereby established concerning citation proceedings:

(1) If the citation respondent appears on the return date, he shall be sworn and examined subject to the discretion of the Court. Upon completion of the examination an order shall be entered dismissing the citation, unless the Court determines that it is necessary to continue the citation. Orders continuing a citation must set forth specifically the reason for the continuance and what is required to complete the citation. Continuances merely to permit a judgment

debtor to complete an installment payment schedule or otherwise satisfy the judgment will not be allowed.

(2) If the citation respondent, having been duly served, fails to appear on the return date, a rule to show cause shall issue. No continuances in lieu of a rule will be granted, except where the court determines it necessary to do so to protect the rights and interests of all parties to the proceedings.

(3) Orders compelling respondent to make installment payments to be applied to the judgment must provide that the underlying citation is dismissed. Rules to show cause for the failure to comply with the terms of such a payment order shall issue only upon petition.

Amend. by Gen. Order 92-16, eff. Sept. 18, 1992 ; Gen. Order 08-04, eff. May 5th, 2008

16.10 RULES TO SHOW CAUSE, ORDERS FOR BODY ATTACHMENT

(a) Unserved rules or orders for body attachment may not be continued.

(b) Where a rule or body attachment is returned unserved:

(1) The first alias shall be returnable approximately 30 days from the date of issuance. The second alias shall be returnable approximately 60 days from the date of issuance. The third alias shall be returnable approximately 90 days from the date of issuance.

(2) If the third alias is returned unserved, the supplementary proceeding will be dismissed with leave to reinstate upon showing that service can likely be obtained.

(c) Except upon affidavit showing lack of knowledge of the description of the body sought to be attached, no orders for body attachment shall issue unless a physical description of the body is provided in the appropriate space on the order. The order shall also contain notation as to the total amount of judgment plus court costs presently owed by the judgment debtor.

Amend. by Gen. Order 92-16, eff. Sept. 18, 1992 ; Gen. Order 08-04, eff. May 5th, 2008