

GUIDE TO

small claims court

VLAA

Volunteer
Lawyers and
Accountants
for the Arts

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St. Louis Volunteer Lawyers and Accountants for the Arts (VLAA) is a referral service that provides free legal and accounting assistance to income-eligible artists and small arts organizations. For those who are ineligible for free services because their family income or annual operating budgets exceed VLAA guidelines, VLAA can provide the names of lawyers and accountants who have expertise in addressing arts-related problems.

VLAA also offers a wide variety of educational programs in arts law and business including seminars, speakers, a resource library, and publications.

Arts Resolution Services, a national collaboration among several volunteer lawyers for the arts organizations, provides mediation services and workshops in negotiation skills.

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Preface

At St. Louis Volunteer Lawyers and Accountants for the Arts, we expect artists to know about form and tempo, not about *trial de novo* or amortization. While our clients rely on our volunteers to help them resolve their legal and accounting problems, we also encourage artists to take an active role in their business affairs.

When disputes occur, some artists are reluctant to take action because the amount in contention seems too small to pursue or because they are intimidated by lawyers and legalese. Small Claims Court, which uses simplified procedures, requires plain English, and permits disputants to represent themselves, allows ordinary people to take charge of their own routine legal needs.

But initiating a law suit should be a last resort, used only after other options have been exhausted. This guide offers suggestions for settling your dispute, including a sample demand letter. It also recommends mediation, an empowering alternative dispute resolution method that helps disputants craft their own settlement with the assistance of a neutral third party. Mediation, which is now mandatory in a few Small Claims Courts and promoted by many others, works best when the parties have an interest in staying on good terms. It avoids the long-lasting antagonism that is produced by a court fight.

If you are convinced that your opponent is totally unreasonable, you may wonder why you should consider mediation. Research shows that when the parties to a Small Claims Court case voluntarily agree to mediate, the overwhelming majority of disputes are resolved before the court date. Better still, people who arrive at a mediated settlement are more likely to pay up than people who lose at trial.

Mediation is not appropriate in every situation. If you are determined to collect every penny and you don't have an ongoing relationship with the other party, going directly to Small Claims Court makes sense.

This guide is designed to take the mystery out of Small Claims Court. It answers the most common questions and describes the procedures used in Missouri and Illinois courts.

Small Claims Court

Small Claims Courts can hear your legal claims of \$5,000 or less in Missouri and \$10,000 or less in Illinois without long delays, the need for representation by an attorney, complicated paperwork, or rigid rules of evidence. You can prepare and present your own case in an informal setting, and most disputes are heard in court within a month or two after the complaint is filed.

Typical small claims cases include suits for money damages against sloppy roofers, auto repair shops, dry cleaners, and neighbors with ferocious dogs. The Small Claims Court cannot force anyone to return property or issue an order that requires someone to “cease and desist” from actions that harm others. Small Claims Court cannot be used by landlords to evict tenants or by those seeking to file for divorce or bankruptcy.

Below are some examples of typical small claims in areas of interest to artists that are included in *An Artist’s Guide to Small Claims Court*, prepared by Volunteer Lawyers for the Arts in New York:

- Marvin Mertz orally agrees to pay Sammy Singer \$700 to perform at Mr. Mertz’s son’s birthday party. After the party, Mr. Mertz won’t pay Sammy. Sammy can bring his claim for the money owed him under his oral agreement with Mr. Mertz in Small Claims Court.
- Peter Painter has a written contract with Fickle Fred to paint his portrait for a \$350 fee. When Peter arrives at Fred’s house to deliver the work and collect payment, Fred refuses to accept or pay for the painting, although it met with the contractual requirements. Peter may sue Fred in Small Claims Court for the price of the portrait stated in the written contract.
- Phyllis Photographer loans her photographs to a local gallery for exhibition. While at the gallery, the gallery damages the pictures beyond repair. Phyllis can sue in Small Claims Court for the cost of reprinting the photographs or the amount of money she could get if she had sold them.

Try to Settle Before You File Suit

Although suing in Small Claims Court is fairly easy, you may not win or be able to collect the money the court says you are owed. You will also have to invest time, emotional energy, and money in filing suit. Litigation should be a last resort, so before you bring your grievance to court, you should try to settle your dispute.

Begin by writing a short, clear, and polite demand letter (see Appendix A) to the business or individual (the defendant) reviewing the history of the dispute, describing the reasons why the other party owes you money, and outlining your idea of a fair settlement. Are you willing to accept less than the full amount, if it is paid now? Would you accept monthly or weekly payments until the debt is paid?

Ask for payment by a set date and explain that if you fail to get satisfaction you will take the case to Small Claims Court. (Alternatively, you can suggest mediation.) Send the letter by certified mail. Keep a copy of the letter and the receipt from the post office. You will need to show these documents to the judge should you decide to go to court.

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If your claim involves a business, you may want to contact other agencies that might be able to assist you in settling your claim, such as the Better Business Bureau or your state's consumer affairs department or Attorney General's office.

Consider Mediation

Mediation may bring more satisfying results than Small Claims Court. In mediation, the disputants meet with a neutral mediator who helps them arrive at their own solutions. Mediation is quick, confidential, inexpensive, and fair. Best of all, research shows that people who arrive at a mediated settlement are more likely to comply with the mediated solution than people who lose at trial.

Mediation has yet another advantage. It allows the disputants to discuss other issues (such as artistic acknowledgment) that would not be considered relevant in Small Claims Court (which only handles claims for money) and to fashion solutions the law does not provide. The mediation often allows the parties to continue to work together (or terminate their working relationship with mutual respect), an important benefit in our close-knit cultural community.

If you do want to mediate, how can you get a reluctant opponent to the table? Mediators can help with that, too. If your dispute is arts-related and you live in Missouri or Southwestern Illinois, call St. Louis Volunteer Lawyers and Accountants for the Arts (314/863-6930). We will contact the other party and try to arrange a mediation session.

Where and How to File a Claim

Who may sue (the plaintiff)? Individuals, associations and/or business organizations, with or without a lawyer, may bring claims to small claims court. If you are under 18 years of age, a parent, guardian, or any other adult who is willing to act for you in court can be designated as your "next friend." Ask the clerk for a copy of the form called "Application for Appointment of Next Friend for Minor Plaintiff."

Who may be sued (the defendant)? You can sue individuals, partnerships, and corporations (but not government agencies) in Small Claims Court. The defendant has the right to file a counterclaim against the plaintiff.

When should you file? It is best to file promptly before memories fade and within the proper time limits established by the statute of limitations, which varies with different types of claims. For most personal injury, property damage, and breach of contract cases, the statute of limitations is five years.

Where should you file? File suit in the county where the transaction took place or in the county where the defendant lives or has an office, if a business.

By law, the clerk is required to help you fill out the relatively simple filing form, but it is up to you to cover the filing fees, to provide the correct name and address of the defendant, and to determine the amount of money you spent or lost.

• In Missouri, the filing fee is \$17, made payable to the Clerk's office at the time of filing. You must also bring a check to cover the cost of "serving" the defendant. (Service is the delivery of an official court document by an authorized court official.) This fee depends on the type of service needed and the location of the Defendant, but is often between \$6 and \$26 for each defendant. If you win your suit, you can often recover these costs.

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- In Illinois, fees vary from county to county but will likely be under \$250. It is best to file your claim in person. If must file by mail, be sure to make a copy and enclose a SASE.
- You must know the legal name and address of the person or business you want to sue. Include the person's full first and last name with no abbreviations. If you are suing a business (partnership, corporation, nonprofit) don't rely on its letterhead or information obtained on the Internet. Instead, contact the your Secretary of State to be sure you have the exact legal name of the business and the name of the Registered Agent.. There is a small fee for this service.

Missouri Secretary of State

www.sos.mo.gov

210 State Capitol

P.O. Box 778

Jefferson City, MO 65102

573/751-4153

111 North 7th Street

St. Louis, MO 63101

314/340-7490

Illinois Secretary of State

www.sos.state.il.us

Business Services Department

Michael J. Howlett Bldg.

501 S. 2nd St., Rm 328

Springfield, IL 62756

217/782-6961 ext. 7733

- Be reasonable when you compute the exact amount of your claim. Don't forget to ask for interest owed and court fees, which the judge may award you. *Everybody's Guide to Small Claims Court* by Ralph Warner can help you decide how much you should ask for in your suit.
- After you file your claim, be sure to get copies of all the forms you completed, your case number, the name and phone number of the clerk who assisted you, and the time, date, and location of your hearing. If you reach an out-of-court settlement before your hearing, be sure to notify the court in writing.

If You Are the Defendant

You've received a summons. You now have four choices: ask for mediation; make an out-of-court settlement; face a default judgment requiring you to pay the amount claimed by the person who is suing you because you failed to appear in court; or oppose the claim by presenting your side of the case to the judge.

You may also file a counterclaim based on the same transaction or a counterclaim based on a different transaction. Ask the clerk to give you the appropriate form. To contest a claim in Illinois, the defendant must pay an "appearance fee" which is \$73 for claims \$1500 or less and \$93 for claims from \$1,501 to \$5,000.

Preparing and Presenting Your Case

Check with the court a week before your court date to be sure that the defendant has received his summons and to reconfirm the date and time. If you are not present when your case is called, the judge can postpone it, decide it without you, or dismiss it. If your case is dismissed you cannot file the same claim again in the same Small Claims Court division.

Visit a session of the small claims court. You'll be less nervous on your day in court if you know what to expect. Make sure you have all of the documents (receipts, cancelled checks, correspondence, contracts, photographs, etc.) that you will need to present your side and that they are well organized. Consider preparing an outline, so you are prepared to tell your story succinctly. Present your most important points first.

If you have witnesses, make sure they are in court on time. If the witnesses do not want to appear, you can subpoena them for a small fee with the assistance of the Clerk's office.

In Illinois, a corporation may not appear in court as a plaintiff without being represented by an attorney. However, when the amount of the claim does not exceed \$1,500, a corporate officer, director, or manager may defend a small claims suit.

Small Claims Court judges take an active role in the proceedings. Try to anticipate the judge's questions. The judge may announce a decision right after hearing both sides or may send you the decision by mail.

Appeals

Congratulations! You've won your case. Before you attempt to collect the money you are owed, you must wait ten days, which gives your adversary time to appeal. Both sides have the right to appeal the judge's decision. To appeal in Missouri, you must file a form called "Application for Trial de Novo" within ten days of the day the judge decided your case. In Illinois, a notice of appeal must be filed within 30 days after the judgment. Appeals are heard in Circuit Court, and you will probably need a lawyer to represent you. If you appeal, be prepared to pay additional filing fees.

Collecting Your Money

Note that the court is not responsible for collecting the money that the judge may determine is owed to you.

Try to collect by asking the defendant to pay in one lump sum or in monthly or weekly installments. If you cannot agree on a payment schedule, you can garnish (to legally take money for payment of a debt) the defendant's wages or bank account (there is a fee for garnishment). The Small Claims clerk can help you file the necessary papers.

If you still have trouble collecting, contact an attorney or the St. Louis Volunteer Lawyers and Accountants for the Arts. Be aware that some defendants may be "judgment-proof" – in order to use garnishment to collect if you win, the losing party must have some assets to garnish (i.e. a bank account) or wages (which must exceed a certain amount). It is best to take this into consideration before filing suit.

If you lose a case, you have the right to demand that the other party file a "Satisfaction of Judgment" form once you have paid the judgment in full. This prevents any future attempts to collect on the judgment you already paid.

Appendix A

Sample Demand Letter

Sammy Singer
222 West Main • St. Louis, MO 63100
(314) 999-1111
sammysinger@aol.com

Date

Marvin Mertz
000 Ellington St.
St. Louis, MO 63XXX

Dear Mr. Mertz:

My group, Sammy's Swinging Sextet, performed at your reception on _____, 20__, for which we were promised payment in the amount of \$_____ by you within ten days of the reception. Although we have sent two invoices, you have failed to pay our fee.

We would like to avoid a lawsuit. If there is a problem regarding the bill, please telephone me at the above number, so that we can discuss the situation.

If we do not hear from you or receive payment within ten days, we will have no choice but to bring suit in Small Claims Court.

We hope this matter can be resolved amicably.

Sincerely,

Sammy Singer

Appendix B

St. Louis Metropolitan Area Small Claims Courts

Madison County

Madison County Courthouse
155 N. Main St., Ste. 120
Edwardsville, IL 62025
618/692-6231

St. Charles County

St. Charles Courthouse
300 North 2nd Street
St. Charles, MO 63301
636/949-3079

St. Clair County

St. Clair County Building
10 Public Sq.
Belleville, IL 62220
618/277-6600

St. Louis City

Civil Courts Building
11th and Market
St. Louis, MO 63101
314/622-4434

St. Louis County

Office of the Circuit Clerk
7900 Carondelet
Clayton, MO 63105
314/615-2601 or 314/615-2592

Resources

Fisher, Ury, and Patton. *Getting To Yes Now*. A classic, this international best-seller offers a concise, step-by-step strategy for reaching mutually acceptable agreements.

Lovenheim, Peter. *How to Mediate Your Dispute*. Published by Nolo Press, the leading publisher of self-help law books, this easy-to-understand book explains why mediation may be the most effective way to resolve your dispute.

Warner, Ralph. *Everybody's Guide to Small Claims Court*. This is another excellent Nolo Press publication. It covers small claims procedures preparing to presenting a winning case in court.

These publications (and many other books on arts law and business practices) are available in the St. Louis Volunteers Lawyers and Accountants for the Arts library.