PURPOSE OF THIS MANUAL

This Manual has been prepared to provide you with general knowledge of the operation of Small Claims Courts in Indiana and specifically, here in Tippecanoe County. While the Manual does not cover all areas of the law or procedure, it does address many of the requirements, issues, procedures and problem areas experienced in Small Claims Court.

Hopefully, this manual will help you in preparing or defending your case. If you have a question about a particular procedure, practice or court policy, check with the court staff or clerk. He or she may be able to assist you.

Please read the Manual from cover to cover. There are also a number of prepared forms available for your use. The forms are designed to be self-explanatory and are available online at www.tippecanoe.in.gov or at the Clerk's and Court's offices. Please check with the clerk staff or court staff to see if a form is available to meet your needs. There is also more information available at www.in.gov/judiciary/selfservice. Although the court staff and the clerks cannot give you legal advice, they will try to answer any procedural questions you might have after you have read this Manual.

At the end of this Manual, you will find a glossary of legal terms and definitions of words which are used in the Manual and which are used in court. Refer to this glossary when you have a question about the exact meaning of a legal term or word.

INTRODUCTION

The Small Claims Courts were created so that you would have a speedy, reasonably inexpensive and uncomplicated means of resolving disputes. You may represent yourself without an attorney. Courts are for your benefit. It is your right to make use of the courts to peacefully settle your disputes.

The procedures are not complex. The Plaintiff fills out a form stating why the Plaintiff believes the Defendant owes him/her money or that the Defendant has property which should be returned to the Plaintiff. Each party will explain his or her side of the story to the Judge at trial.

While Small Claims Courts have simple rules of procedure, it takes more than just filing out a simple form and showing up in court. The Judge's decision will be based on the evidence presented by the parties during the trial and in applying the appropriate law to the facts proven.

A good case can be lost if you do not prepare your case before the trial or if you fail to effectively present your evidence at the trial. Proper preparation and

effective presentation of your evidence greatly increase your chances of success in Small Claims Court, either as a plaintiff or a defendant.

You may hire an attorney if you want but you do not have to hire an attorney. In most cases, you will not be able to get the other party to pay your attorney fees even if you win. You can only recover your attorney fees if there is a written agreement making the other party responsible for paying your attorney fees, if a statute or law provides that you are entitled to recover attorney fees or if the Judge determines the claim or defense was frivolous.

BEFORE YOU FILE YOUR CLAIM, ask yourself these questions:

(1) Am I willing to pay the court costs knowing I may not be successful in court or even if I am, I may not be able to collect on the money judgment ordered by the Court?

(2) If I do file a claim, do I know where the Defendant lives or works so the Defendant can be served with the claim?

It is your responsibility to locate the Defendant and provide a good address where the Defendant can be served legal papers. The Court and the Sheriff cannot find the Defendant for you. If you don't know where the Defendant works, lives or receives mail, then you cannot go forward with your claim.

(3) If I am successful and the Court awards me a judgment, how likely is it that the Defendant will pay me the money the Court says he/she owes me? Does the Defendant even have the ability to pay the judgment and my court costs?

If the Defendant is not likely to voluntarily pay you, then you must be willing to take the time and make the effort to continue to pursue the Defendant for collection of the judgment.

Does the Defendant even have any money, bank accounts or other assets to pay the judgment? If the Defendant does not have a job, is not likely to ever have a job or does not have any money or other assets to pay the judgement, the Court cannot do anything more with your judgment.

If you are willing to risk the amount you paid for court costs, are able to properly serve the Defendant and believe the Defendant has or will have the money to be able to pay you if you win a judgment, you still must answer these questions:

(1) Does the Small Claims Court have the authority (jurisdiction) to hear my case?

(2) Is Tippecanoe County the proper location (venue) for filing my claim?

(3) Who are the true parties to the action? Am I suing the right person or people?

(4) Have I waited too long to file my claim? Has the statute of limitations expired on my claim?

If the Small Claims Court (1) has the authority to hear this kind of case, (2) Tippecanoe County is the proper venue for your case, (3) you are able to identify the proper and true parties to the action and (4) the statute of limitations has not expired --- then you may file your case.

WHAT YOU CAN AND CANNOT SUE FOR IN SMALL CLAIMS COURT

Small Claims Courts have the authority to hear certain cases when the amount in question is $6,000.00 or less. This is the maximum amount a Small Claims Court can award to a party and includes pre-judgement interest and attorney fees (but not court costs).

If you believe the Defendant owes you more than $6,000.00 but less than $10,000, you cannot file your claim in Small Claims Court. You must file your claim on the Plenary Docket in Tippecanoe Superior Court 6 or any other civil docket in Tippecanoe County. If you want to keep your case on the Small Claims Docket, you will waive or forego any amount over $6,000.00. If you keep your case on the Small Claims Docket, you cannot later file another case for the rest of your claim that is over $6000.00.

For example: the Defendant crashed into your car and it will cost $8,400.00 to repair or replace your car. You want to keep your case in the Small Claims Court. You can only ask for and the Judge can only order a total judgment of $6,000.00. You cannot file two separate cases, one for $6,000.00 and one for $2,400.00.

If you file on the Plenary Docket, then the informal Small Claims Rules do not apply. The Plenary Docket requires formal legal procedures and pleadings and strict compliance with all statutes, laws, trial rules and evidence rules. While

you may still represent yourself in a Plenary Docket case, it would be very difficult to do so effectively if you are not a trained and licensed attorney. If you choose to represent yourself in a Plenary Docket Court, the Judge cannot give you any special consideration or help because you are not an attorney. Therefore, the Court strongly recommends you hire an attorney for cases you file on the Plenary Docket.

Here are some examples of cases you may file in Small Claims Courts:

(1) Personal injury (to a human being)
(2) Damage to personal property (including animals and pets)
(3) Landlord and tenant disputes for failure to pay rent or other violations of the lease and for damages to the rental unit
(4) Damage to real property and real estate
(5) Money owed (loans, bad checks, wages earned but not paid, services rendered, accounts receivable)
(6) Return of wrongfully taken/retained personal property
(7) Refunds for money paid for faulty work or repairs

Here are some examples of cases you may <u>not</u> file in Small Claims Courts:

(1) Dissolution (divorce), paternity or child custody or visitation or to enforce any part of the dissolution (divorce) decree or order
(2) Actions requesting injunctive or declarative relief (asking the Court to make someone do something or stop doing something)
(3) Mortgage foreclosures and many other issues related to the sale of real estate such as contracts for sale of real estate by installment payments including land contracts or to remove someone who refuses to leave after the sale of real estate
(4) Many issues related to wills, trusts and estates of deceased persons
(5) Any claim asking for more than $6,000.00

If your claim involves issues that arose in a dissolution case (divorce) or a paternity case (child custody or visitation), then it is likely your current claim or dispute must be heard in that original case.

If you want to sue someone in Small Claims Court on behalf of the estate of a deceased person, you must first be authorized by the Circuit Court to legally represent the estate. You may want to speak with an attorney to see how to accomplish this.

If the issues you want to sue for now are related to a case that has already been considered by or already filed in another court, you likely cannot file another claim in Small Claims Court. Usually, you must bring all related issues – including counterclaims -- in one court case to be heard by one court.

There are also limits to the rate interest you can request. You may not be able to be awarded pre-judgment interest unless the Defendant agreed in advance to be responsible for pre-judgment interest if you had to sue to collect what is owed. Once a judgment has been entered, there is also a limit on the amount of interest you can request post-judgment.

PARTIES TO THE SUIT

The Plaintiff is the person (or business) who files the lawsuit and asks the Court to have the Defendant pay money to the Plaintiff or to grant some other relief. The Plaintiff must be the person (or business) to whom the money is actually owed. Having the Power of Attorney for another person does not permit you to sue on behalf of that person or defend on behalf of that person.

While an individual person who is owed money can represent him/herself as the Plaintiff in a lawsuit, a business usually must hire an attorney even in Small Claims Court. But there are some exceptions which are explained later (see page 6).

> *For example*: the manager of the auto repair shop usually cannot sue a customer for a bad check written to the auto repair shop because the manager is an employee of the auto repair shop. It usually must be the owner of the shop or an attorney hired to represent the auto repair shop who files the lawsuit and comes to Court.

The Defendant is the person (or business) who is being sued and who must defend against the claim of the Plaintiff. If the Plaintiff believes more than one person is responsible, then all Defendants should be named in one suit. They would all then be the Co-Defendants.

If you are suing a business, usually you must name and sue the business or corporation itself (not the employee who helped you or performed the work or the manager of the business). As the Plaintiff, it is your responsibility to know who the proper party is and to find the correct name of the business. You must determine if that business is a sole proprietor, a partnership, a limited liability company (LLC) or a corporation.

The Plaintiff may sue any company doing business in the State of Indiana. If you plan to sue a corporation, you must name the corporation as the Defendant but you must serve the corporation's Registered Agent with the Notice of Claim. The Indiana Secretary of State, Corporations Division can tell you the name and address of the corporation's Registered Agent and its officers. This information is also available from the Secretary of State website at www.in.gov/sos.

Usually, the Registered Agent or the officers of a corporation are not personally responsible for the debts, obligations and liabilities of the corporation and should not be listed as defendants in your claim. You may want to talk to an attorney if you think you need to name a corporation as a defendant in your claim.

LOCATION (VENUE) FOR FILING YOUR CLAIM

The county in which the suit is filed must meet one of these requirements to be the proper county of venue. If more than one county qualifies, then the Plaintiff can file suit in any one of the qualifying counties.

Small Claims Rules state that the right place to file a small claims suit is the county where:

(1) The transaction or occurrence actually happened; or
(2) The debt or obligation was incurred; or
(3) The obligation is or was to be performed; or
(4) The Defendant lives; or
(5) The Defendant has his/her business or place of employment at the time the claim or suit is filed

REPRESENTATION IN SMALL CLAIMS COURT – ATTORNEYS

Small Claims Rule 8 allows a person to appear at trial and, if he/she chooses, represent him/herself (*pro se*) and avoid the cost of hiring an attorney. However, you are permitted to hire an attorney if you choose and have the attorney appear with you or for you in Small Claims Court proceedings including the trial.

You are not entitled to have a court-appointed attorney in a Small Claims case. If you want an attorney or need legal advice for a Small Claims case, you may contact Indiana Legal Services, Inc. or Legal Aid Corporation of Tippecanoe County, Inc. to see if you qualify for their services. The contact information for these agencies is on the inside back cover of this Manual.

Nobody else can represent you in court or speak in your place in court other than an attorney licensed to practice law in Indiana. This includes your parents and your spouse even if they hold your Power of Attorney.

SOLE PROPRIETORS, PARTNERSHIPS and CORPORATIONS (S.C. Rule 8)

As a general rule, a corporation, an unincorporated partnership or a business operating as a sole proprietor must be represented in court by an attorney. Small Claims Rule 8 does provide an exception for certain claims.

A sole proprietor, partnership or corporation, whether as a Plaintiff or a Defendant, may be represented by a full-time employee who is not an attorney if all of the following conditions exist:

(1) The claim for or against the business entity is $1500.00 or less;

(2) The claim is not an assignment (meaning is not a debt that has been assigned to a collection agency);

(3) There is a Resolution or authorization and employee affidavit on file with the Clerk's Office authorizing a specific full-time employee, by name, to represent the business entity. This form is available online or at the Court's office.

If an employee attempts to represent the business entity and there is not a written Resolution on file with the Clerk's Office, then any judgment awarded in favor of the business entity will be void and unenforceable. It is the responsibility of the business entity to make sure that at all times, the proper written Resolution with the specific name of the designated full-time employee is on file with the Clerk's Office.

If the claim for or against the business entity is more than $1500.00, even if it is less than the Small Claim limit of $6000.00, an attorney must represent the business entity. The actual owner of a sole proprietorship or one of the partners of a legal partnership may also represent the business entity in all Small Claims cases.

DEADLINES FOR FILING SUIT (STATUTE OF LIMITATIONS)

Before you file your lawsuit you must be sure that you file the case within the time period provided by the statute of limitations. You cannot bring suit if the time limit has expired. There are very few and very limited exceptions.

These are some of the most common time limits. This is not a complete listing of the statutes of limitations. Please research the Indiana Code for more specific information.

- Two (2) years (IC 34-11-2-4):
  - Personal injury (injury to human being)
  - Damages to personal property or personal belongings

- Four (4) years: a contract for the sale of goods

- Six (6) years (IC 34-11-2-9 and IC 34-11-2-7):
  - Promissory notes and contracts for the payment of money (loans)
  - Accounts receivable
  - Contracts not in writing (other than a contract for a sale of goods)
  - Rents and use of real estate (landlord-tenant disputes)
  - Damages to real property (real estate)
  - Recovery of personal property

- Ten (10) years (IC 34-11-2-11): written contracts other than for the payment of money

For a contract, whether verbal or written, the time limit begins to run when the contract is breached (broken). For personal injury or damages to property, the time limit begins to run when the when the injury occurs or when the damages happen.

FILING A SMALL CLAIMS CASE

If you want to file a lawsuit against another person or business, you must follow these rules and steps:

(1) Complete a Notice of Claim form

Briefly, clearly and legibly describe the nature and amount of your claim against the Defendant. You will have an opportunity to explain more fully in Court. This form is available online or at the Clerk's Office.

(2) Attach a copy of any written contract, written agreement, invoice, etc.

If your suit is based on a written contract or a written agreement of any kind, you must attach a copy of the written contract or agreement, lease, account statement, invoice, etc. to your Notice of Claim form.

If your suit is based on an account, you must attach an Affidavit of Debt to your Notice of Claim form. This form is available online or at the Clerk's Office.

(3) Make three (3) copies of the completed Notice of Claim form (front and back) and all attachments. You need one original and three copies.

(4) Give the Clerk the name (with the correct spelling), current mailing address and telephone number for all Defendants. Include an email address, if you have it.

The Clerk will not accept your Notice of Claim unless you have provided a current mailing address for a Defendant. Without a current mailing address, the Defendant cannot be served and your case cannot move forward.

(5) Decide if you want the Defendant served with your Notice of Claim by the Sheriff or by Certified Mail with a return receipt card.

The Sheriff will take a copy of the Notice of Claim (and the Court Summons) to the physical location of the Defendant's residence address you provided. The Sheriff will give the Notice of Claim and Summons to any adult present at the address. If an adult is not at home to accept the Notice of Claim and Summons, the Sheriff will attach the Notice and Summons to the front door of the Defendant's residence or the common front door of the building which houses the Defendant's residence.

The Sheriff will also mail a copy of the Notice of Claim and Summons to the same address by regular mail. The Sheriff will then file the Return of Service with the Clerk. You can check the online court records to see if your Notice and Summons have been served by the Sheriff. (www.mycase.in.gov then search Court Records).

If your Notice and Summons are served by Certified Mail, the Clerk will issue a green return receipt card for the Defendant to sign showing he/she has been served. If nobody is home when the U.S. mail carrier delivers the Certified Mail and if the Defendant does not respond to the notice left by the U.S. mail carrier to come pick up the Certified Mail, then the Defendant has not been legally and properly served. You can check the online Court records to see if your Notice and Summons have been served by Certified Mail. (www.mycase.in.gov then search Court Records).

(6) Pay the filing fee and the service of process fees to the Clerk.

You must pay the fees at the time you file your case. If you win your case, the Defendant will be ordered to repay this money to you. If you do not win your case, this money will not be refunded to you.

In some situations, if you believe you cannot afford to pay the filing fees and service fees, you may file a Verified Motion to Waive Pre-Payment of Filing Fees and Court Costs. This form is available online or at the Clerk's or Court's Office. After reviewing your Motion, the Judge

may waive all the filing fee or only some of the filing fee or may deny the Motion (which means you must pay the entire filing fee).

(7) Take the original and all three (3) copies of your completed Notice of Claim with attachments to the Court office to obtain a court date.

The Defendant must be served with your Notice and Summons at least ten (10) days before this first court date.

The Clerk will then send your Notice to the Sheriff for personal service or will send your Notice via Certified Mail, depending on which method of service you have chosen and for which you have paid.

If the Sheriff or Clerk is not able to find and serve (notify) the Defendant within this ten (10) day time period, you may either dismiss your case or ask for a continuance to give you more time to find the Defendant and to try again to serve him/her with notice of your lawsuit.

Once you believe you have now found a current mailing address or location for the Defendant, you must start again and complete the same Notice of Claim form. This is now called an Alias Notice of Claim. Use the same Notice of Claim form as you did the first time and just write the word "Alias" at the top.

Again, attach the same documents, if any, as you did with the original Notice of Claim and again make three (3) copies. You will file the Alias Notice of Claim in the same case and cause number as you did the original Notice of Claim. You do not have to pay another filing fee. However, you must pay additional service fees.

You may withdraw or dismiss your claim any time before the trial. But fees paid to the Clerk for filing and service upon the Defendant cannot be refunded.

If you have questions about the procedures you must follow, ask the Clerk or Court staff for help. If you need legal advice, you must talk to an attorney. The Clerk, the Court staff and the Judge can never help you with legal advice including telling you whether or not you should file your case or your chances of winning your case or your counterclaim.

You can always look up your case to see if Motions have been granted and when Orders are completed by the Court at www.mycase.in.gov. It usually takes about two or five business days from the time an Order is issued by the Judge to when the Order is displayed online.

COUNTERCLAIMS and THIRD PARTY CLAIMS

If you are the Defendant and you believe that you have any claim against the Plaintiff, then you may file a counterclaim against the Plaintiff. On your counterclaim, your role then is called the Counter-Plaintiff and the original Plaintiff is called the Counter-Defendant.

You must file your counterclaim with the Clerk so that the Clerk will be able to mail a copy to the Plaintiff in time for the Plaintiff to receive it at least seven (7) days before that first court appearance. If the Plaintiff does not receive the copy of the counterclaim within that time, the Plaintiff may request a continuance (postponement) of the trial date to allow time to prepare to defend against your counterclaim. Complete a Notice of Counterclaim form. The form is available online or at the Court or Clerk's Office.

The Small Claims Court can only consider a counterclaim of $6000.00 or less. If you believe the Plaintiff owes you more than $6,000.00, you may file a written Verified Motion to Transfer to Plenary Docket or For Jury Trial and Affidavit to transfer your case to the Plenary Docket which does hear cases where the amount claimed is more than $6000.00. This form is available online or at the Court office.

If your Counterclaim is transferred to the Plenary Docket in Superior Court 4 or in another Tippecanoe County Court, then the Small Claims Rules do not apply. The Plenary Docket requires formal legal procedures and pleadings and strict compliance with all statutes, laws, trial rules and evidence rules.

While you may represent yourself in a Plenary Docket case, it would be very difficult to do so effectively if you are not a trained and licensed attorney. If you choose to represent yourself in a Plenary Docket Court, the Judge cannot give you any special consideration or help because you are not an attorney. Therefore, the Court strongly recommends you hire an attorney for cases you request to transfer to the Plenary Docket.

If you want to keep your counterclaim on the Small Claims Docket, you will waive or give up any amount over $6,000.00. If you keep your counterclaim on the Small Claims Docket, you cannot later file another case for the rest of your counterclaim that is over $6000.00.

If a counterclaim is filed, the Court will hear the Plaintiff's complaint and the Defendant's counterclaim during the same trial and at the same time.

As the Defendant, if you believe that somebody else instead of you or in addition to you, may be responsible for all or part of the Plaintiff's claim, you may file a Notice of Third Party Claim and add that other person to the lawsuit.

Complete a Notice of Third Party Claim. Fill out the form naming this other person as the Third-Party Defendant and explain why you believe this person should be responsible for the Plaintiff's claim instead of you or in addition to you. This form is available online or at the Court or Clerk's Office.

SETTLEMENTS AND AGREEMENTS

It is always best if the parties can reach a mutually agreeable settlement of their case. You may not get everything you ask for or everything you want or think you should get. But a compromise may be more than you will receive if the Judge hears and considers all the evidence presented by both parties.

If the Plaintiff and the Defendant are able to reach an agreement about the dispute before the trial, the parties should put their agreement in writing and have all parties sign the Agreed Judgment. This form is available online and at the Court Office.

The Agreed Judgment may include a money amount owed by one party to the other, any payment arrangements and any agreements for the exchange of or return of property. Once all parties have signed the Agreed Judgment, file the agreement with the Court office. The Judge will then sign and approve the settlement and enter the agreement as the judgment in the case. No trial will be needed.

DISCOVERY

Discovery is the process where parties in a lawsuit exchange information about the claim and defense. This is done before the trial so all parties can be prepared for the trial and nobody is surprised by the information or evidence.

If the other party has information you need to prove or to defend the claim and you cannot get the information from another source, you may ask the Court to order the other party to give this information to you. Both the Plaintiff and the Defendant may make such a request. To do this, you must file a written Verified Motion for Discovery. This form is available online and at the Court Office.

In the Motion, you must: (1) list each specific item or piece of information you are requesting, (2) state why the item or information is necessary, (3) why you have not been able to get the item or information from another source and (4) why you think the other party either has or is capable of getting the item or information.

A Motion for Discovery will be granted only if you give good reasons for needing the information and only after the other party has been notified of your claim and that you are asking for the information. The Judge may limit the information requested to only that which is absolutely necessary for the particular case.

Either party may also ask the Clerk to issue a *subpoena duces tecum* which is a subpoena (a Court order) to obtain records and documents from a third party (a person or business who is not already a party to the case) who might have information helpful to prove or defend the claim. This form is available online or at the Court office.

If you are served with a Motion for Discovery and you believe you should not be required to provide the information or evidence requested, you may file an Objection to Motion for Discovery. This form is available online or at the Court office.

JURY TRIALS

When a Plaintiff files a claim in Small Claims Court, the Plaintiff automatically waives or gives up the right to a trial by jury. If the Defendant wants a jury trial, he/she must file a written Verified Motion to Transfer to Plenary Docket or For Jury Trial and Affidavit no later than ten (10) days after the Defendant is served with the original Notice of Claim. This form is available online or at the Court Office. The Defendant must also pay the transfer fee to the Clerk.

In some situations, if you believe you cannot afford to pay the transfer fee, you may file a Verified Motion to Waive Pre-Payment of Filing Fees and Court Costs. This form is available online or at the Court or Clerk's Office. After reviewing your Motion, the Judge may waive all the transfer fee or only some of the transfer fee or may deny the Motion (which means you must pay the entire transfer fee).

When filing the Verified Motion to Transfer to Plenary Docket or for Jury Trial and Affidavit, the Affidavit must:

(1) State that there is a question of fact in the case which requires a jury trial; and
(2) Explain the specific facts supporting this claim; and
(3) Verify (state under oath) that the request for a jury trial is made in good faith.

The transfer fee must be paid within ten (10) calendar days after the jury trial request has been granted; otherwise, the party requesting the jury trial has waived the request. This is a strict time limit. If a jury trial request has been granted, it may not be withdrawn or canceled without the agreement of all

parties. If the request for a jury trial is withdrawn after the transfer fee has been paid, this fee is not refundable.

If the Defendant properly requests a trial by jury, the case will lose its status as a Small Claims case and will be transferred to the Court's Plenary Docket.

Again, the Plenary Docket requires formal legal procedures and pleadings and strict compliance with all statutes, laws, trial rules and evidence rules. While you may represent yourself in a Plenary Docket case, it would be very difficult to do so effectively if you are not a trained and licensed attorney. If you choose to represent yourself in a Plenary Docket Court, the Judge cannot give you any special consideration or help because you are not an attorney. Therefore, the Court strongly recommends you hire an attorney for cases you request to transfer to the Plenary Docket.

SCHEDULING YOUR FIRST COURT DATE

Once you have filed your case and paid your filing fees to the Clerk, you will schedule a first court appearance date. This date will depend on what dates and times are available on the Court's schedule. Superior Court 4 is a high volume court with a specific, regular and busy schedule. Unfortunately, we cannot always accommodate special scheduling requests due to the high volume of cases, both civil and criminal, we must handle each week.

CONTINUANCES

Continuances (postponements) will only be granted if good cause is shown. If you need to ask for a continuance, you must file a written Verified Motion for Continuance. This form is available online or at the Court Office. The Court does not accept requests to continue the case by telephone or by email.

Each continuance must be specifically approved by the Judge. Merely filing a Verified Motion for Continuance does not mean your Motion will be granted. Parties should appear at all hearings or trials unless specifically told by the Court staff that the case has been continued. Do not rely on anyone else to tell you whether or not your case has been continued.

If a continuance is granted by the Judge, the Court will issue a written Order setting a new date and time for the next court hearing or trial. This Order will be sent by email to all parties at the email address on file with the Court (or by U.S. mail if there is no email address). So it is very important that the Court always have both your correct mailing address and email address and a telephone number. If there is a change in your Court date, even at the last minute, the Court staff will try to contact you by telephone. Except in unusual circumstances, no party will be allowed more than one (1) continuance of the trial date. Small Claims Rule 9(A).

YOUR FIRST COURT APPEARANCE

At your first Court appearance, assuming the Defendant has been served and appears in Court, the Judge will ask the Defendant if he/she agrees or disagrees that he/she owes you money, etc.

- If you and the Defendant agree that the Defendant owes you money and you agree on the amount owed, an Agreed Judgment will be entered right then. Your case will be done.

- If you and the Defendant do not agree that the Defendant owes you money, etc., then the Judge will likely hear your case (conduct the trial) right then. Both sides need to be prepared for trial at that time with all witnesses present and all paperwork, documents, receipts and evidence.

If the Defendant does not show up for this first court appearance after being property served, then a Default Judgment may be entered. You would still need to prove and document your claim to the Judge so even at your first Court appearance, bring this information with you. See more about Default Judgments on page 20.

CHANGE OF JUDGE

You may request a change of Judge, but strict time limits apply. You must file your written request with the Court within thirty (30) days after suit is filed (Trial Rule 76) or earlier if the trial is set within thirty (30) days after filing suit. Most trials in Small Claims Court will be set earlier than thirty (30) days.

TRIAL

If both parties appear, the trial will be held in an informal, yet orderly, manner. The Judge may have you stand in front of the bench or may have you sit at the tables.

The Plaintiff will present his/her case first. The Plaintiff may do this by testifying on his/her own behalf and also by having other witnesses testify. The Defendant may not interrupt or say anything at all while the Plaintiff is presenting his/her case.

Exhibits and other evidence such as receipts, written leases, photographs or other items to support the Plaintiff's claim for damages may be shown to the Judge. The Defendant will have the opportunity to review all the exhibits and evidence.

The Plaintiff may also call the Defendant to testify. This is not a criminal case so either party can call the other party to testify. Anyone who testifies in Court will first be sworn (or will affirm) to tell the truth, the whole truth and nothing but the truth.

After the Plaintiff has finished, the Defendant will then present his/her case. The Defendant may also testify, present witnesses and present evidence just as the Plaintiff did. The Plaintiff may not interrupt or say anything at all while the Defendant is presenting his/her case.

During the trial, the Judge may stop at any point to ask questions of any of the parties or witnesses. In addition, the Judge may, with or without a request by either party, inspect scenes or locations involved in the case.

All Court proceedings are audio recorded. It is important that only one person speak at a time. There can be no interruptions. All persons must speak in a loud and clear voice for the recording.

Although the trial is informal, all parties and witnesses are subject to penalties for contempt of Court and perjury. Respectful and courteous behavior is expected and required at all times; both inside and outside the Courtroom.

WITNESSES AND EXHIBITS FOR TRIAL

Once you have filed or been served with a Small Claims case, you should immediately begin to prepare your case for trial. Write down a clear and concise statement of your claim or your defense. This statement will help you to clarify the facts of your claim or to defend the claim.

Compare your memory of events to any documents or other evidence you may have that support your memory of the events and what each party said. Check, verify and be able to document all relevant dates and events.

Next, gather all documentation and anything else which supports your claim or defends against the claim: (1) records, (2) receipts, (3) canceled checks or money orders, (4) copies of contracts or other written agreements, (5) photos and videos, (6) invoices, (7) estimates of damages and any other items directly related to the case which will help you establish the facts of your story. If there is any doubt, bring it to Court.

> *For* example: Don't forget to bring the subject matter of your claim. If the dry cleaner ruined your favorite coat, bring the coat.

Any and all documents, exhibits and other evidence become part of the Court record of the trial. They cannot be returned. If you want to keep the original documents, bring both the original and <u>two</u> copies. If the Judge is satisfied as

to the authenticity of the copies, the copies may be identified and made part of the Court record in place of the original documents.

How best to present exhibits and evidence at trial

Photographs should be printed on real photo quality paper (either 4x6 or 5x7) rather than on regular photocopy paper or stationary. For the best quality, you may want to have your photos printed commercially (for example, at a local pharmacy or other store) rather than using your home printer.

If you have text messages, emails or other electronic communications that you believe are important to your case, you must print these out and have them ready for the Judge. But also bring the necessary electronic device as this will help you to authenticate the photos, emails or text messages.

Showing the Judge your photos, videos, emails or text messages only on your phone, tablet, computer or other electronic device is not helpful. Remember, evidence and exhibits become part of the Court records and cannot be returned. Your phone or other electronic device would then have to be kept by the Court and cannot be returned to you.

If you want to show the Judge a video, you must save the video onto a DVD or other portable storage device. Also, bring a tablet or laptop to be able to play the video in Court during the trial so everyone, including all parties and the Judge, can watch and hear the video at the same time. The DVD or portable storage device will become part of the Court record.

Getting your witnesses to come to the trial

Are there are any witnesses who have firsthand knowledge about your claim and your dispute with the other party? People who only know what someone else told them (hearsay) will not be as helpful to your case. Try to get witnesses who know relevant facts because they were there and heard what was said or who actually saw what happened.

The value of witnesses' testimony depends upon the information they have, their expertise, the presence or lack of bias. The testimony of persons who might be biased, such as relatives or people who benefit if you win the case, may not be given as much weight as the testimony of a neutral, disinterested person. But their information may still be helpful to you.

Examples of other people you may to call as witnesses are: (1) the police officer who responded to the scene of the crash, (2) the mechanic who fixed your car, (3) the veterinarian who treated your animal, (4) the workers who made repairs to your house. Think of anyone and everyone who has information and knowledge to help you prove or defend your case.

Once you have determined who your witnesses are, contact them and ask them to relate the story to you as they would before the Judge so that you will not be surprised by their testimony once you get to Court. If you feel the witnesses will help prove your case, ask them if they will come to Court and tell the Judge what they know about your claim or your defense.

If a witness does not want to appear and testify voluntarily, you may ask the Clerk to issue a subpoena ordering the witness to appear at the trial. You should subpoena your witnesses as soon as you are assigned your trial date. Just as when you needed the Defendant's address to serve your Notice of Claim on the Defendant, you must also provide the Clerk with the correct address for any witness you want served with a subpoena.

Getting your witnesses to come to Court and gathering all the needed exhibits, documents, evidence and papers is your responsibility. Bring everyone and anything and everything you think might be helpful in proving or defending your case.

Be sure all your evidence is well-organized and your case is well-documented. The Judge will not sort through all your papers to help you prove or defend your case. The Judge will not recess the case to another day or wait for you to go retrieve some other paper or document. The Judge cannot telephone missing witnesses.

While the Small Claims Rules are less formal than the Indiana Trial Rules, there are two rules which do apply. Testimony or evidence about offers to settle or compromise are not permitted. It does not matter and will not be considered that the Defendant offered you a lesser amount to settle the case. Insurance coverage or lack of insurance coverage is also not relevant and will not be considered.

Testimony about privileged communication is also not permitted to be offered in Small Claims Courts. Examples of privileged communications are private conversations between legally married spouses, a doctor and patient, an attorney and client, a priest (minister, pastor, rabbi) and congregant.

MOTION TO DISMISS

If the Plaintiff and the Defendant settle the case anytime before the trial or if the Plaintiff does not want to pursue to claim any further, the Plaintiff must file a Motion to Dismiss. This form is available online and at the Court office.

Trial Rule 41(E) requires a Plaintiff to diligently pursue the claim once the claim is filed; the case cannot just remain pending indefinitely. If the Plaintiff fails to diligently pursue and go forward with the case for at least sixty (60)

continuous days, the Defendant may file a Verified Motion to Dismiss Pursuant to T.R. 41(E). This form is available online and at the Court office.

If a case is dismissed pursuant T.R. 41(E), the Plaintiff may refile the same case but will have to start all over again and pay another filing fee. The first filing fee and service fees will not be refunded. The refiling of this same case must still be within the applicable statute of limitations as of the date of the refiling.

BURDEN OF PROOF

The Plaintiff has the burden of proof by a preponderance of the evidence. The Defendant on his/her Counter Claim has that same burden of proof. Preponderance of the evidence means 51% compared to 49% -- more likely than not.

In other words, to win, your evidence has to be more convincing than that of the other party. If each party's evidence is equal-- 50% to 50% -- you will not win.

> *For example*: if it is your word against the word of the person you are suing and both of you are equally believable and credible, the Judge must decide the case in favor of the person you are suing because you have not "tipped the scales" past 50%.

The Plaintiff (including the Counter-Plaintiff) must prove two things before the Judge can find in favor of the Plaintiff: (1) Liability and (2) Damages.

Liability: The party seeking judgment (Plaintiff or Counter-Plaintiff) must first prove fault --- meaning you must prove the Defendant (or Counter-Defendant) has done something wrong; that he/she is at fault for what happened and so is responsible for causing your damages. If the Plaintiff is not able to prove fault, then the case is over and the Judge will find in favor of the Defendant.

Damages: If you prove the other party (Defendant or Counter-Defendant) is at fault or has done something wrong, you must still prove the amount of damages before a judgment may be entered in your favor. The Judge cannot guess or speculate how much the Defendant should pay you for your damages. If you cannot produce satisfactory evidence to show the amount of damages, the Judge cannot award you a judgment.

Examples of damages include:

Personal injury: If the Defendant's actions caused bodily injury to you for which you received medical treatment, then you may ask the Judge to make the Defendant pay for your hospital bills, doctor bills and other reasonable and necessary medical expenses. This may include your pain and suffering.

However, you cannot collect for bills that your insurance company will cover or has already paid.

Personal property: If the Defendant's actions caused damage to your personal property like your automobile or other personal belongings, then you may ask the Judge to make the Defendant pay for the repairs. If the personal property is destroyed or "totaled," then the amount of your damages is the "fair market value" of the item at the time of the loss. This does not mean "replacement value" or what it would cost to buy the item new today. If the cost to repair the property is more than the "fair market value," generally, the Judge will only require the Defendant to pay you the "fair market value" of your personal property

Real property: If the Defendant's actions caused damage to your home, your real estate or the rental property you own, then you may ask the Judge to make the Defendant pay to restore the real property to how it was before the damage. Damages to the rental property you own might also include the loss of rent for the time you were not able to lease out the property and collect rent because of the damages caused by the Defendant and the time it reasonably took to repair the rental property.

Breach of contract. If the Defendant breached your contract, then you may ask the Judge to make the Defendant to pay you for the actual loss you suffered because he/she "broke his promise."

DEFENDANT FAILS TO APPEAR AT TRIAL – DEFAULT JUDGMENT

If the Defendant does not show up for trial, the Plaintiff can ask for a default judgment against the Defendant. For the Judge to grant the default judgment, the Plaintiff still must prove the following:

(1) There is a reasonable probability the Defendant was actually served with the Notice of Claim; and.

(2) So far as the Plaintiff knows, the Defendant: (a) is not on active duty in the military, (b) can read, write and understand the English language, (c) has no legal impairment or physical or mental disability that would keep him/her from attending the trial or that would prevent the Defendant from understanding the nature of the proceedings; and

(3) The Plaintiff has a valid claim and should recover from the Defendant.

The Judge may ask the Plaintiff to testify and to present evidence to prove the claim. You may prepare and have ready an Affidavit for Default Judgment. This form is available online or at the Court office. Small Claims Rule 10(B).

PLAINTIFF FAILS TO APPEAR AT TRIAL

If the Plaintiff fails to appear for trial, the Small Claims Rules provide that the Court may dismiss the case without prejudice. If the claim is dismissed without prejudice, the Plaintiff can refile the claim by starting over, serving the Defendant with a new Notice of Claim and paying another filing fee.

If the Plaintiff fails to appear a second time for trial, the Small Claims Rules provide that the Court may dismiss the claim with prejudice. A dismissal with prejudice will prevent the Plaintiff from ever attempting further action on the same dispute or claim. Small Claims Rule 10(A).

If the Plaintiff fails to appear at trial and the Defendant appears and has filed a counterclaim, the Judge may enter a default judgment against the Plaintiff based on the Defendant's counterclaim, assuming the Defendant satisfies all the requirements for a default judgment. This includes filing an Affidavit for Default Judgment. This form is available online or at the Court office. Small Claims Rule 10(B).

VACATING OR SETTING ASIDE A DEFAULT JUDGMENT

If the Defendant later learns about the default judgment and disagrees with it, he/she may file a Verified Motion Set Aside and Vacate Default Judgment. This usually must be filed within one (1) year of the date the default judgment was entered. This form is available online or at the Court office.

If the Motion is properly filed, the Judge may schedule a court date to consider and hear evidence about the Motion. Or the Judge may rule on the Motion without a hearing. The party requesting the Judge to vacate or overturn the default judgment must show "good cause" for vacating the default judgment.

"Good cause" usually means the Defendant did not get proper service or notice of the filing of the court date. If the Defendant was late to the court hearing, missed the hearing or forgot the date, this is not "good cause" to vacate or set aside a default judgment

If the Judge does vacate the judgment, the case will be scheduled for a new trial on the original claims of the parties just as if the default judgment never happened. Small Claims Rule 10.

If more than one (1) year has passed, the Defendant may still file an action to vacate the original judgment but must do so only by strictly following Trial Rule 60(B) of the Indiana Rules of Trial Procedure. This can be a complicated procedure for which it would best to speak with a lawyer.

JUDGE'S DECISION and JUDGMENT

The Judge may make a decision at the end of the trial or take the matter under advisement and issue a decision at a later date. In either event, the judgment will be entered into the Court record.

If the Judge announces the decision at the end of the trial, the case is done. The Judge will not consider any more evidence or listen to any more testimony after the decision is announced. Do not argue with the Judge. The Judge's decision is final.

If the Judge takes the matter under advisement, the Judge's written decision will be mailed directly to all the parties or to the attorneys of record if the party is represented by a lawyer. After you receive your copy of the judgment in the mail, do not contact the Court and ask to present more evidence. The Judge cannot consider any more evidence or listen to any more testimony. The Judge's decision is final.

APPEAL

If any of the parties believe the Judge made legal errors when deciding the case, an appeal of the Judge's decision may be taken to the Indiana Court of Appeals. You have thirty (30) days from the date the judgment was entered to file your appeal with the Court of Appeals. This is a strict deadline. Small Claims Rule 11(A).

Due to the complexity of filing an appeal, the party wanting to appeal the Judge's decision should talk to an attorney as soon as possible after the Small Claims Court judgment has been entered.

OTHER INFORMATION ABOUT YOUR DAY IN COURT

- Give yourself extra time to get to the Courthouse and find a place to park. Make sure you do not park where you might get a parking ticket. Parking around the Courthouse Square is limited to two (2) hours. If you get a parking ticket, you must pay your ticket. There are two parking garages near the Courthouse.

- You must pass through security screening, including metal detectors, when entering the Courthouse. Any bags, packages, backpacks, purses, etc. will be searched and inspected. No weapons of any kind are permitted inside the Courthouse.

- Arrive early for your trial. This will help ease your nervousness and you may have a chance to observe other trials. However, be prepared to wait if the other trials take longer than expected.

- You should dress neatly and appropriately when going to Court. Dress as if you were interviewing for a new job. This shows respect for the Court and the proceedings.

- Cell phones and other recordings devices are not permitted to be used inside any courtroom in Indiana. Power off your phone and keep it in your pocket, purse, backpack, briefcase, etc. Never look at or have your phone in your hands while you are in the courtroom waiting for your case.

- When the Judge enters the courtroom, if you are able, you should stand up and remain standing until the Judge asks all persons to be seated.

- Do not approach the bench or the Court Reporter for any reason. The Judge will call you to come forward at the proper time.

- Refer to the Judge as "Judge" or "Your Honor."

- Be respectful to everyone, including the other party and his/her witnesses.

- The Judge will not expect you to be an accomplished public speaker. Speak candidly and calmly, like you're having a conversation. You know your case or your defense better than anyone. Just tell it like it happened and you will do fine.

- Remain calm at all times. Do not argue with anyone including the other party, the other witnesses or the Judge.

- Do not interrupt anyone. You will get your chance to tell the Judge your side of the story. Be polite and wait for your turn.

- If you need any special arrangements or have any special needs, please notify the Court staff as far in advance as possible. The Court will do all we can to make reasonable accommodations for any special needs you may have including vision and hearing assistance and language interpretation.

- You should not bring small children with you to your trial. You will need to be able to concentrate fully on your case.

CHANGE OF ADDRESS OR TELEPHONE NUMBER

If you change your email, mailing address or telephone number after you have become a party to a small claims suit, you must promptly notify the Court in writing of the change by filing a Notice of Change of Address or Telephone

Number. We do not accept these changes by telephone. This form is available online or at the Court office.

Notifying the U.S. Postal Service of your forwarding address is not enough. You must personally notify the Court in writing of your old address, your new address and your cause number (79D04-xxxx-SC-xxxxx). In fact, whenever you call the Court to ask questions about your case, please have your cause number ready.

All notices and orders about your case, including any continuances of the trial date and other upcoming Court dates, will be sent to your email address. If you do not have an email address, you may want to establish one and check your email regularly. If we have a correct telephone number for you, we will attempt to contact you if there are any last minute changes in your Court dates.

If you don't change your email address or your mailing address, the notices and orders will be sent to and served at your old address. If your mail is not returned, the Court will assume you received the notices of any new Court dates. If you are ordered to appear in Court and you do not show up, a writ (civil arrest warrant) may be issued for you to be served by the Sheriff. You will be taken into custody of the Sheriff and brought to Court as soon as possible. So it is very important that the Court always have a correct email address and correct mailing address for you at all times.

You must maintain a correct email address and current mailing address with the Court until the case is completely finished. If a judgment is entered, this means all parties must notify the Court all changes of address until the judgment is paid in full.

COLLECTION OF JUDGMENT

A judgment entered in your favor is a legal decision by the Court that another person owes you money. You are now the Judgment Creditor and the person who owes you money is the Judgment Debtor.

The Judge may order the Debtor to either pay you directly or to pay to the Clerk (who will forward all payments to you). Either way, it is your responsibility to monitor and keep track of payments. If the Debtor makes payments directly to the Creditor, the Debtor should get and keep proper documentation of all payments made.

Collecting this money judgment from the Debtor can be the most difficult, challenging and frustrating part of your Small Claims Court experience. If the Debtor does not voluntarily pay the judgment, it is your responsibility to continue to pursue the Debtor to collect your judgment.

The length of time it will take to collect your judgment will depend upon your diligence and the Debtor's ability to pay. There are attorneys and collection agencies who specialize in collecting judgments. You may want to consider talking with an attorney or collection agency to assist you in collecting your judgment.

Judgment Lien on Real Estate

Your judgment will be recorded in the judgment docket of Tippecanoe County. At the time your judgment is recorded, it then becomes a lien (hold) on any real property owned (not leased or rented) in Tippecanoe County by the Debtor, whether now or in the future.

For your judgment to be a lien on real property in another county in Indiana it must be recorded in that county. Get a certified copy of your judgment from the Clerk's Office in Tippecanoe County and take it to the Clerk's Office in the Indiana county where the Defendant owns real estate. The judgment will then become a lien on the Defendant's real property in that county.

If your Debtor ever sells the real estate upon which your judgment has been filed as a lien, all mortgages must first be paid off. A mortgage has priority, even if your judgment lien is recorded earlier than the mortgage. After the real estate is sold and the mortgages are paid in full, if there is enough equity remaining, any other liens on the real estate are paid in the order they were recorded. If there is not enough equity to pay all the mortgages, your judgment lien will not be paid.

Expiration of Judgment

The judgment itself may be enforced for up to twenty (20) years after its entry. After twenty (20) years, a judgment is presumed to be satisfied under IC 34-1-2-14. But this presumption of satisfaction is not conclusive and can be rebutted by the Creditor.

After ten (10) years, the judgment lien against the real property will expire. However, you can renew the lien against real estate for another ten (10) years by bringing an action on a judgment within the ten (10) year statute of limitations found in IC 34-1-2-2(6) and before the lien expires.

Proceedings Supplemental

If the Debtor has not paid the judgment or stops making payments on the Judgement, you can bring the Debtor back to the Court to ask the Court to enforce the judgment. The first step in attempting to collect is to file a Verified Motion for Proceedings Supplemental. This action is filed in the same case

and under the same cause number as your judgment. This form is available online or at the Court office.

When a Proceedings Supplemental is filed, an Order to Appear will be served either by Sheriff or by Certified Mail (or both) at the Debtor's last known address. You must pay another service fee to have this Order to Appear served. This Order to Appear requires the Debtor to appear in Court and answer your questions under oath about his/her assets, bank accounts, expenses, income, employment and ability to pay.

If the Debtor cannot be found to be served with the Order to Appear for the Proceedings Supplemental hearing, then no further action can be taken by the Court. The case will be continued without any new dates to allow you more time to find the Debtor and to serve him/her with the Verified Motion for Proceedings Supplemental and Order to Appear for the proceedings supplemental hearing. If the Motion and Order to Appear are to be served by the Sheriff, another service fee must be paid.

At the hearing, the Judge may order any of the following:

(1) The Debtor to answer your questions under oath about his/her current address, employment status, sources of income, other financial debts owed, money owed by others to the Debtor, real estate, bank accounts and other assets in the Debtor's name, etc. that may be used to satisfy the judgment

(2) The Debtor to return to Court sometime in the future to provide additional information on his/her ability to pay

(3) A garnishment of the Debtor's wages or other earnings

(4) Execution (enforcement) against the Debtor's personal property including bank accounts

If the Debtor is served with notice of the Proceedings Supplemental hearing and does not appear as ordered, the Court will then issue the Debtor a notice for a Show Cause hearing and order the Debtor to explain why he/she should not be held in contempt for disobeying the Court's order to appear for the Proceedings Supplemental hearing.

If the Debtor then does not appear for the Show Cause hearing, the Court may issue a writ of body attachment. A writ is similar to a criminal arrest warrant but is issued in a civil case for not appearing in Court as ordered by the Judge. Writs are not issued because the Debtor owes money; writs are only issued because the Debtor failed to appear in Court as ordered.

Before a writ can be issued, the Creditor must provide the Court with the Debtor's date of birth, Social Security number or driver's license number. Without this identifying information, the writ will not be issued.

Any law enforcement officer can serve a civil writ. If the Debtor is located, he/she will taken into custody until the cash bond set by the Judge is posted or he/she is seen by a judicial officer and a new Court date is scheduled. Any cash bond that is posted by the Debtor will be applied to the judgment.

The Judgment Creditor can regularly file Proceedings Supplemental and the Judgment Debtor be ordered back to court until the judgment is paid in full.

Garnishment

Garnishment is a court order requiring a person (usually an employer) who owes money to the Debtor to pay some of that money to you instead. The vast majority of garnishments are for wages and salary earned by the Debtor at a job where the Debtor is an employee.

To obtain a Final Order in Garnishment (FOG), you must first find out where the Debtor works. This is information you must obtain and furnish to the Court.

If you have information about where or for whom the Debtor possibly works, check the appropriate box on the Verified Motion for Proceedings Supplemental and the Court will issue Interrogatories to Employer (Garnishee Defendant) of Judgment Debtor to the possible employer to verify if the Debtor is employed. This form is available online and at the Court office.

Two copies of the Interrogatories to Employer (Garnisheee Defendant) of Judgment Debtor must be attached to the Verified Motion for Proceedings Supplemental that is issued to the possible employer: one on green paper and one on white paper.

Green: The employer will include the Debtor's Social Security Number but this copy is excluded from public access.

White: The employer will not include the Debtor's Social Security number and this copy is part of the public record in the case file.

Only one civil garnishment can be applied at one time. It is important to "get in line" because garnishment orders are paid in the order they are received by the employer. If the Debtor changes jobs, you will have start again and ask for a new Final Order of Garnishment order to be issued to the new employer.

The law also limits the total amount of money that can be garnished at the same time. Also, money owed for child support or for taxes always has priority over garnishments of civil judgments even if your judgment was entered first.

The Court can determine from the answers to the Interrogatories whether the Debtor has wages which can be garnished.

There is a precise formula for calculating how much of a Debtor's wages or salary may be garnished. IC 24-4.5-5-105(2) and (3). The garnishment is calculated using disposable earnings (i.e., after all taxes have been deducted but before any other deductions like insurance premiums, retirement contributions, union dues, charitable contributions).

The maximum amount that may be garnished is the lesser of:

(1) 25% of disposable earnings for a week – OR –
(2) The amount by which disposable earnings for a week exceed thirty (30) times the federal minimum hourly wage (currently equal to $7.25 x 30 = $217.50 per week)

For example: if the Debtor's weekly disposable earnings are $250.00:

(1) 25% of $250.00 = $62.50
(2) All wages exceeding $217.50 ($250.00 - $217.50) = $32.50

Because all wages exceeding $217.50 ($32.50) is less than 25% of disposable earnings ($62.50), under this example, the Debtor's wages may only be garnished up to a maximum of $32.50 per week.

If the Debtor is self-employed or works as contract labor, he/she may not be receiving a regular paycheck. Instead, you may try to discover who owes the Debtor money for work the Debtor has performed. These are assets you may be able to attach (lay claim to) to collect your judgment. However, again this is a complicated process for which you may want to consult an attorney.

Execution against Personal Property

Execution against personal property is a legal procedure for the Court to issue an order permitting you to take possession of the Debtor's personal property or other personal assets (*for example*: jewelry, tools, motor vehicles, musical instruments, audio/visual equipment and other personal belongings). These personal assets can be sold and the proceeds from the sale used to pay towards the judgment. This method of collection is strictly controlled by statute and subject to many exemptions. For that reason, you may want to talk with an attorney if you think execution against personal property might be worthwhile.

Execution against Bank Accounts and Tax Refunds

If the debtor has funds in a bank account (e.g., checking, savings. money market, etc.), Indiana law permits the Creditor to request a Final Order in Garnishment for any bank account in the name of the Debtor. This includes joint accounts for which the Debtor is one of the account holders.

To obtain a Final Order in Garnishment against the Debtor's bank account, you must first find out where the Debtor does his/her banking or has bank accounts. This is information you must obtain and furnish to the Court.

If you have information about where the Debtor possibly has bank accounts, check the appropriate box on the Verified Motion for Proceedings Supplemental and the Court will issue Interrogatories to Financial Institution (Garnishee Defendant) of Judgment Debtor to the financial institutions who might hold an account in the Debtor's name. This form is available online and at the Court office.

Two copies of the Interrogatories to Financial Institution (Garnisheee Defendant) of Judgment Debtor must be attached to the Verified Motion for Proceedings Supplemental that is issued to the financial institution: one on green paper and one on white paper.

> Green: The financial institution will include the Debtor's full account numbers but this copy is excluded from public access.
>
> White: The financial institution will only include the last four digits of the Debtor's account numbers and this copy is part of the public record in the case file.

IC 28-9-3-4 requires the Creditor to follow certain steps to be able to obtain a Final Order in Garnishment that requires a financial institution to "freeze" or place a "hold" on the funds in the bank account. This method of collection is strictly controlled by statute and subject to many exemptions and exceptions.

If the Debtor does have an account at that financial institution, the issuance of the Interrogatories to Financial Institution (Garnishee Defendant) of Judgment Debtor will result in the account being frozen and a "hold" placed on the account.

If the Debtor believes some or all of the funds on deposit in an account are exempt and should be released, the Debtor may file a Notice of Exemption Rights – Verified Request for Hearing. The Creditor must include this form with the copy of the Verified Motion for Proceedings Supplemental and the Interrogatories to Financial Institution (Garnishee Defendant) of Judgment Debtor that you serve the Debtor. Also see Notice of Exemption Rights below.

Currently, Indiana law does not permit individuals to garnish or attach any income tax refunds to satisfy a civil judgment.

Other Information about Collection of the Judgment

If the Debtor dies before the judgment is paid in full, you must file a claim against the Debtor's estate. This is a separate action that is filed in the Circuit Court if an estate has been opened. It does not happen in Small Claims Court.

If the Debtor files bankruptcy and your judgment is listed in the bankruptcy petition, the Court is required by Federal law to stop all collection proceedings. In that case, your only remedy is in Bankruptcy Court.

NOTICE OF EXEMPTION RIGHTS

Not all of the Debtor's income is available to be garnished to satisfy a civil judgment. Sometimes, property or income is protected or exempt from collection by state or federal law. One example is the limit on the amount of money that can be garnished from weekly disposable earnings.

Other sources of income may also be exempt from garnishment including legally exempt income that has been deposited into a bank account.

For example: Social Security benefits, worker's compensation benefits, child support payments, unemployment compensation, Veterans' Administration benefits and some retirement benefits.

Other exemptions under Indiana or federal law may apply to income and property. You may wish to seek legal advice from an attorney.

It is the Court's policy to not approve Agreed Judgments or agreements regarding Proceedings Supplemental which would result in the Debtor losing exempt property or income unless it can be shown the Debtor was aware of his/her exemption rights before agreeing to the settlement.

However, a Debtor may voluntarily make payments to you using these sources of income. To show that the Debtor is aware of these exemption rights, the Creditor must have the Debtor complete a Notice of Exemption Rights form. This form is available online or at the Court office.

RELEASE and SATISFACTION OF JUDGMENTS

Once the judgment and all fees, court costs and interest have been paid in full or to the satisfaction of the Judgment Creditor, the Creditor should file a Release of Judgment. This form is available online and at the Court office.

If the Judgment Debtor believes he/she has paid the judgment in full but the Judgment Creditor has failed to file the Release of Judgment, the Debtor may file a Verified Motion for Release of Judgment. This form is available online and at the Court office.

The Judgment Creditor will then have thirty (30) days to file any objection to the Release of Judgment. If the Creditor files an objection, the Motion will be scheduled for a hearing. If the Creditor does not file an objection, the Court will order the judgment released and show the judgment has been satisfied and paid in full.

EVICTIONS (ORDER OF POSSESSION) - S.C. RULE 16

If you are a landlord, whether for an apartment complex with dozens of units or you are renting out your house until it sells, the rules and statutes governing the relationship between yourself and your tenant are the same. If your tenant is either not paying the agreed upon rent or is violating other conditions and terms of your lease agreement, you can file for an eviction in Small Claims Court. See Indiana Code Title 32, Article 31.

However, if you are selling real estate on a land contract or some other installment contract arrangement and the buyer is not following through with the agreement, you cannot file a Small Claims eviction case to get the buyer removed from the property. It is recommended that you contact an attorney in those complex real estate cases.

Before you file for an eviction for nonpayment of rent, in most cases you must first give your tenant a ten (10) day notice to pay up or move out. If the tenant still does not pay his/her rent to current, then you may file for eviction (See IC 32-31-1-5, 32-31-1-6 and IC 31-31-1-7).

You start an eviction proceeding – whether for nonpayment of rent or for violation of any of the other terms of the lease – by filing a Notice of Claim for Possession of Rental Unit and/or Rent Due. This form is available online, at the Clerk's Office and at the Court office. The tenant will be served the Notice of Claim just like any other Small Claims case. A first Court date will be set as quickly as possible, usually in about ten (10) days. The Court hears eviction cases most every weekday at 8:25 AM.

If the landlord and tenant come to an agreement before the Court date, the landlord may notify the Court that the hearing will not be necessary. The landlord will need to dismiss the case. If the tenant again falls behind on rent or commits other lease violations, the landlord may file a new eviction proceeding.

The landlord may continue an eviction proceeding one time for up to four weeks. At the new hearing date, the case must either be dismissed by the landlord or proceed to an eviction hearing on the evidence.

At the eviction hearing, the landlord will present the completed Eviction Judgment Worksheet. This form is available online or at the Court office. This form must be neatly prepared by the landlord in advance of the Court hearing. The form will list the rent still due, any other money still due (like utilities, late fees or attorney fees) and the pro-rated rent until the anticipated date of possession (usually seven (7) days after the Court date).

The Judge will ask the tenant if he/she agrees or disagrees with the amount of past due rent still owed and any of the other amounts claimed by the landlord. If there is no dispute, the Judge will enter judgment for the landlord in the amount agreed and also order the tenant to surrender possession (move out) of the rental unit no later than seven (7) days after the Court date at 12 noon. This is an Order for Possession. This deadline date to move out cannot be extended unless the landlord agrees to a later date.

If the tenant does not agree with the amount of past due rent the landlord claims is still owed or any of the other claims by the landlord, the Judge will hear testimony and consider evidence right then on the issue of possession only. If the landlord proves his/her case (*for example*: the tenant has not paid rent when due or is otherwise damaging the property or violating other lease terms), the landlord may be granted possession of the rental unit and issue an Order for Possession.

If necessary, another hearing will be scheduled for a later date to hear more testimony and evidence about damages and other issues. But the Judge may issue a judgment for possession in favor of the landlord and order the tenant to move out in the mean time.

Even if the tenant is current with all rental payments, the landlord may still file for eviction if the landlord is claiming the tenant is breaching (violating) other terms of the lease (*for example*, not paying utilities as required, allowing unauthorized people to live in the rental unit, unauthorized animals on the premises, committing waste or any other material violations of the lease).

No action will be taken regarding any security deposit paid by the tenant until after the tenant has moved out and the landlord has inspected the rental unit. A tenant is not considered to have vacated (moved out) of the rental unit until the tenant has returned the keys directly to the landlord's hands or as otherwise specifically instructed by the landlord.

If the landlord claims there are damages that exceed the amount of the security deposit, the landlord may file a Motion for Hearing for Damages in the same

case with the same cause number as the original eviction. There is no additional filing fee to be paid. This form is available online or at the Court office.

If the tenant believes the landlord kept more of the security deposit than the tenant believes is the landlord was entitled to keep, the tenant may also file for a Motion for Hearing for Return of Security Deposit in the same case with the same cause number as the eviction. There is more information about security deposits later in this Manual (pages 36-37).

If the tenant has not moved out of the rental unit by the deadline ordered by the Judge, the landlord may call the Sheriff's Office directly during normal business hours to schedule an appointment with the Sheriff's Office. This appointment will be scheduled as the Sheriff's Office is available. It may not be on the same day as the date ordered by the Judge for the tenant to move out.

The Sheriff's Office will meet the landlord at the rental unit and stand by while the landlord changes the locks and physically bars the tenant from the rental unit. The Sheriff's Office does not help the landlord physically remove the tenant's property from the rental unit.

If the landlord and tenant come to a different or new agreement after the judgment is entered and possession is ordered, they may do so.

> *For example*: the landlord may agree to let the tenant stay and remain in the rental unit if the tenant pays the judgment in full. But the landlord is not required to make any different or new agreements or to give more than the seven (7) days to vacate.

The Order for Possession is valid for thirty (30) days. Any time after the deadline to vacate but before thirty (30) days since the date of the Order for Possession, the landlord may call the Sheriff's Office to request stand-by assistance to remove the tenant.

If the landlord has not otherwise had the tenant removed from the rental unit before the Order for Possession expires in thirty (30) days, the landlord must start again and file a new Notice of Claim for Possession of Rental Unit and/or Rent Due and pay another filing fee and service fees.

What All Landlords and Tenants Should Know about Evictions

(1) Verbal (oral) lease agreements are enforceable but often difficult to prove. There are far fewer disagreements about the terms of the lease when the lease is in writing, all terms are clearly written and all parties have read it carefully before signing.

Tenants: Do not sign the lease without carefully and thoroughly reading all pages. You are responsible for everything you have agreed to do and pay once you sign the lease.

Landlords: Do not give the keys to the tenant without the lease first being signed by all tenants. If you want an occupant to be held responsible for payment of rent and other terms of the lease, you must have that occupant sign the lease. If the tenant later lets someone move in (roommate, boyfriend, relative, etc.), you cannot hold that occupant responsible unless that occupant also signs the lease and becomes a tenant. But you should include the names of all adult occupants on any eviction so their names will be listed on the Order for Possession.

(2) If you have a written lease, you cannot change or modify the terms of the lease simply by talking about it. The law does not permit you to verbally change the terms of a written contract. A lease is a contract. If your lease is in writing, any changes or modifications must also be in writing and signed by all parties to the lease, meaning the landlord and <u>all</u> tenants.

Tenants: Do not rely on verbal promises by the landlord to repair, remodel or fix things, permit a pet when the written lease prohibits pets, allow other people to move into your rental unit with you or any other promises that conflict with what your written lease says. The verbal promise cannot be enforced by the Court unless the landlord agrees the verbal promise was made to you.

Landlords: Do not make verbal promises to do anything different or contradictory to the written lease. This will complicate issues if you need to go to Court. If you make modifications or changes to your agreement with the tenant, these changes must be in writing and signed and dated by the landlord and <u>all</u> tenants.

(3) Landlords should keep complete records of all rent payments received, security deposits paid, etc. Tenants should demand rent receipts and should keep those receipts and all canceled rent checks.

Tenants: Even amongst friends and family members, disagreements can arise later about what was paid and what was not paid. Always get a receipt for any money you give to your landlord no matter who your landlord is. Make sure the receipt is dated and notes for what you are paying (rent for what month, water bill, gas bill, security deposit, etc.).

The receipt should be unique to the landlord, meaning on letterhead or some other way to verify the receipt was issued by the landlord. If the landlord says you did not pay for something for which you were required to pay and you cannot prove you paid, the landlord will win on that issue.

If you make payments by money order, the proof of payment is the canceled money order showing the landlord cashed or deposited the money order. The receipt from where you purchased the money order is not proof of anything other than you purchased a money order.

(4) Unless the lease terms provide otherwise, the general rule is that a month-to-month lease, written or oral, requires advance notice of at least one full month for termination by either party.

For example: if the tenant gives notice to the landlord on February 3 that the tenant intends to move out, the tenant is still responsible for the full rent for February and the full rent for month of March -- not just until March 3. If the tenant plans on moving out at the end of February, the landlord must have been notified <u>before</u> the end of January.

(5) If the landlord has accepted late rent payments in the past, the landlord must give the tenant notice, preferably in writing, that in the future late payments will no longer be accepted and will be considered a breach of the lease contract.

(6) Reasonable charges for late rent payments may be requested at the time of the eviction but only if provided for in the written lease agreement or if the parties otherwise agree that the tenant will be responsible for late fees if the rent is not paid on time.

(7) The Judge may order the tenant to pay the landlord's attorney's fees but only if the written lease agreement permits this or if the parties otherwise agree that the tenant will be responsible for the landlord's attorney fees.

(8) Landlords are entitled to come onto or enter the rental unit at reasonable times and with reasonable notice to make repairs and inspections. Landlords are entitled to immediate access, without notice, to make emergency repairs and inspections. Otherwise, the tenant is entitled to peaceful enjoyment. If the landlord wrongfully violates the peaceful enjoyment, the landlord is in violation of the lease.

(9) As a general rule, a landlord has no duty to make repairs to the rental unit unless the landlord agrees to do so and puts this agreement in writing. Tenants must inform the landlord promptly and preferably in writing when <u>essential</u> repairs are needed.

If the landlord fails to make <u>essential</u> repairs within a reasonable time after notice, only then may the tenant have the repairs completed and deduct the cost of the repairs from rent BUT ONLY for essential and necessary repairs for which the tenant notified the landlord.

Tenant: You may not withhold rent because repairs have not been made. If the needed repairs make the rental unit uninhabitable or unlivable, then you must move out. You cannot claim the rental unit is uninhabitable and continue to live there without paying rent.

Landlords: If the condition of the rental unit is such that the city or county inspector has notified you that the rental unit is uninhabitable, then you may not have anyone live in the rental unit and you may not collect rent for that unit.

(10) The landlord is only allowed to recover damages for cleaning and repairs that are in excess of normal wear and tear. Tenants are expected to leave the premises in as clean and good a condition as when they took possession.

Tenants and Landlords: Together, you should complete a "move-in" walk thru on the day the tenant actually moves in to the rental unit. *Both* of you should make a list of any existing issues and pre-existing damages and *both* of you should sign the list.

Both of you should take your own detailed, date-stamped photos of the rental unit on move-in day. A video would also be helpful. Almost everyone carries a smartphone today so there is no good reason why move-in and move-out photos and videos are not always taken and recorded.

To be useful, the photos must be properly lit, not blurry and of good quality. *For example*: a close-up photo of a hole in a door is not helpful without showing the hole in context: first, take pictures of the

entire room, then the entire wall and then the entire door and only then the close-up of the hole.

(11) If the landlord claims damages in excess of normal wear and tear, the landlord must be able to prove the cost to clean, repair or replace. The landlord may perform the cleaning and repair work him/herself but the costs must be reasonable. Written documentation of the proof of actual costs of cleaning and repairs is a place to start when proving damages.

Tenants: You should move out on time, take all of your belongings and property with you (including all the food in the refrigerator) and thoroughly clean the entire rental unit including all kitchen appliances and bathroom fixtures. Then return the keys directly to the landlord. It will be very expensive if the landlord has to pay to clean the rental unit and pay to dispose of whatever trash, garbage or personal property you leave behind.

Landlord: Unless your lease provides otherwise, you cannot charge to repaint and replace the carpet every time a tenant moves out when the only issue is normal wear and tear. The amount you charge the tenant to clean and make repairs must be reasonable and in keeping with the usual and customary charges in this area.

(12) When the tenant moves out, the tenant must provide to the landlord written notice of the tenant's forwarding (new) address. Once the landlord has received this written notice, the landlord then has forty-five (45) days to either refund in full the entire security deposit or send a written, itemized statement showing why the landlord is keeping some or all of the security deposit.

Tenants: Verbally telling the landlord your new address is not enough. This information must be provided in writing. It is best if you send your landlord a certified letter with a return receipt and also email your landlord. The forty-five (45) days does not start to run until your landlord receives this written notice of your new address.

Landlords: If you are keeping any or all of the tenant's security deposit, you must send the tenant an itemized list detailing the individual items you say were damaged by the tenant and the cost to replace or to repair. A general listing is not sufficient. If you do not send this itemized list within forty-five (45) days, the tenant is entitled to a refund of the entire deposit regardless of the damages you may claim. You may still be entitled to recover unpaid rent from the security deposit.

(13) All keys should be returned to the landlord as soon as the rental unit has been vacated. Additional rent may be charged until the keys are returned.

Tenants. You will be considered to still be "in possession" of the rental unit until you deliver the keys directly to the landlord. Leaving the keys in the rental unit and even telling the landlord the location of the keys may not be sufficient.

(14) All of the tenants who signed the lease are usually jointly and severally liable for all the terms of the lease as individuals and together. This means if one or more of your co-tenants moves out or damages the property, all tenants are liable for the money now owed to the landlord.

The landlord may seek to have just one of the tenants to pay all of the rent and damages. It is then the responsibility of that tenant to track down the other tenants and file a claim against them for their share of the rent or damages.

(15) Usually, the landlord cannot disconnect (turn off) the utilities to the rental unit in an attempt to force the tenant to move out, even if the utilities are in the landlord's name. Also, the landlord usually cannot lock the tenant out of the rental unit without a court order.

An illegal utility disconnect or an illegal lock out may result in a judgment in favor of the tenant and against the landlord. The Court may order the landlord to pay punitive damages to the tenant as a penalty for the illegal disconnect or lockout.

(16) Usually, the landlord cannot keep the tenant's personal property and hold the personal belongings as security for unpaid rent or damages. If the landlord disposes of the tenant's personal property without first getting a Court order, the landlord may be required to pay punitive damages to the tenant as a penalty.

If the landlord is forced to store the tenant's personal property and belongings, the tenant may be required to pay for any storage expenses. The storage facility may also have a claim (lien) on the property for payment of storage fees.

But if the Court determines the tenant's personal property has been abandoned by the tenant, the Court may issue an Order to the landlord granting the landlord permission to take possession of the tenant's personal property. Then the landlord can do with the property whatever the landlord wants. The landlord can throw it away, donate it, sell it or keep it. If the landlord sells or keeps the tenant's personal

property, the value of this personal property will then be applied against any money owed by the tenant to the landlord.

(17) Landlords are required to mitigate or reduce any damages.

For example: if the tenant moves out before the end of the lease, the landlord must make every reasonable effort to re-rent the rental unit to another tenant and thereby mitigate or reduce the rent due from the tenant for the remainder of the lease term. The landlord cannot just leave the rental unit vacant and expect the tenant to pay the full rent until the end of the lease.

FILING MOTIONS AND PAPERS WITH THE COURT

The most common forms you will need to file and to defend a Small Claims case including evictions and damages claims are available online (www.tipppecanoe.in.gov) or at the Court office or the Clerk's Office. You may:

(1) Come to the courthouse to pick up the necessary forms and either take the forms home to complete in neat handwriting or complete the forms while at the courthouse.

(2) Print off the online form at home, complete in neat handwriting and bring or mail the completed form to the courthouse.

(3) Complete the PDF version of the form online, print off the completed form and bring or mail the completed form to the courthouse.

GLOSSARY OF DEFINITIONS and LEGAL TERMS

Agreed Judgment – An agreement by the parties settling a dispute, subject to the Judge's approval.

Affidavit – A written statement made upon the affirmation that the statement is true under the penalty of perjury or under oath before a notary public or other person authorized to administer oaths.

Body Attachment – An order of arrest issued when a party does not appear at a rule to show cause hearing.

Chronological Case Summary (CCS) – The docket sheet; the history of the case; a brief summary of the important events taken in a case. It should show all filings, return of service, all hearings, trials, orders, judgments, etc.

Contempt – An act or a failure to act that tends to obstruct or interfere with the operation of the Court.

Continuance – Postponement of a hearing or trial to a later date.

Counterclaim – A written demand by a defendant against a plaintiff for money or possession of property.

Damages – A sum awarded by the Court as compensation for an injury.

Default Judgment – Decision for the plaintiff when the defendant fails to appear in Court.

Defendant – The person being sued.

Discovery – A request for disclosure of information held by the adverse party.

Dismissal – The removal of a claim from the Court prior to a trial.

Eviction – The legal process of removing someone from real property.

Garnishee-Defendant – A third party served with a written notice to apply property to a judgment.

Garnishment – A request that property (cash or other items of value) controlled by a third person be used to pay a judgment.

Immediate Possession – A procedure for expedited return of real property or personal property.

Injury – Any wrong or damage done to another, either to a person, his or her rights, or property.

Interrogatories – Written questions.

Judgment – The decision of the Court.

Judgment Creditor – The party in whose favor a judgment is entered; the party to whom the Court has said money is owed.

Judgment Debtor – The party who owes money; the party the Court has said owes money.

Jurisdiction – The authority of the Court to hear and decide cases.

Lien – A legal claim of one person upon the property of another to secure the payment of a debt.

Litigant – A party to a lawsuit.

Motion – A request, usually in writing, asking the Court to do something or take some action.

Notice of Claim – Written statement of a claim against the defendant that serves as a notice that the lawsuit has been filed and that the party is ordered to appear in Court.

Open Account – A running bill for goods or services rendered under a pre-existing agreement between parties.

Party – Any person suing or being sued.

Personal Property – Moveable items or things that have value and are owned.

Plaintiff – The person suing.

Post-Judgment Interest – Compensation for loss of the use of money from the day of judgment to the time the judgment is collected.

Pre-Judgment Interest – Compensation for loss of the use of money between the time the money was due and the day a judgment is entered.

Pro se – a litigant or party who is representing him/herself without having an attorney or lawyer represent the litigant or party

Proceedings Supplemental – A written filing asking the Court to take steps to collect a judgment.

Real Property – Ownership, rights or interests to land and items such as buildings that are affixed to the land.

Record of Judgments and Orders (RJO) – A day-by-day official record of the Court showing all the court orders and judgments for each day.

Release of Judgment – An entry on the Court's records showing the judgment has been paid in full. Also sometimes called a Satisfaction of Judgment.

Rule to Show Cause – A written request asking the Court to hold an adverse party in contempt for not following a Court order.

Statute of Limitations – A time limit for filing a case.

Subpoena – A Court order requiring the appearance of a witness at a hearing or trial.

Subpoena Duces Tecum – A Court order requiring the person or business served to produce the document or record listed in the subpoena.

Third-Party – Someone other than the plaintiff or defendant.

Third-Party Notice of Claim – A written claim allowed when a third party has a financial claim or obligation that relates to the lawsuit between the plaintiff and defendant.

Vacate – Making a judgment or Court order ineffective.

Venue – The county where the case must be filed.

SMALL CLAIMS RULES

Rule 1. Scope; citation.

(A) Scope. These rules shall apply to all small claims proceedings in all courts of the State of Indiana, including Marion County Small Claims Courts, having jurisdiction over small claims as defined by relevant Indiana statutes.

(B) Citation. These rules may be cited as S.C. .

Rule 2. Commencement of action.

(A) In general. An action under these rules shall be commenced by the filing of an unverified notice of claim in a court of competent jurisdiction and by payment of the prescribed filing fee or filing an order waiving the filing fee.

(B) Form of notice of claim. The notice of claim shall contain:

(1) The name, street address, and telephone number of the court;

(2) The name, address, and telephone number of the claimant and defendant(s);

(3) The place, date, and time when the parties are to appear on the claim, which date shall be set by the court with the objective of dispensing speedy justice between the parties according to the rules of substantive law;

(4) A brief statement of the nature and amount of the claim;

(a) if the claim arises out of written contract, a copy shall be attached; however, the fact that a copy of such contract is not in the custody of the plaintiff shall not bar the filing of the claim; and

(b) if the claim is on an account, an Affidavit of Debt, in a form substantially similar to Small Claims Appendix A shall be attached;

(5) A statement that the parties may appear either in person or by an attorney;

(6) An instruction to the defendant that the defendant should bring to the trial all documents in the possession of or under the control of the defendant concerning the claim;

(7) A statement that if the defendant does not wish to dispute the claim he may nonetheless appear for the purpose of allowing the court to establish the method by which the judgment shall be paid;

(8) The name, street address and telephone number of the person designated by the court with whom the defendant may communicate if defendant is unable to appear at the time or place designated in the notice;

(9) A statement that a default judgment may be entered against the defendant if he fails to appear on the date specified in the notice of claim;

(10) Notice of the defendant's right to a jury trial and that such right is waived unless a jury trial is requested within ten (10) days after receipt of the notice of claim; that once a jury trial request has been granted, it may not be withdrawn without the consent of the other party or parties; and within ten (10) days after the jury trial request has been granted, the party requesting a jury trial shall pay the clerk the additional amount required by statute to transfer the claim to the plenary docket or, in the Marion Small Claims Court, the filing fee necessary to file a case in the appropriate court of the county; otherwise, the party requesting a jury trial shall be deemed to have waived the request; and

(11) Any additional information which may facilitate proper service.

(C) Assistance by clerk. The clerk of the court shall prepare and furnish blank notice of claim forms and the clerk of the court, or other employee of the court as the judge may designate, shall, upon request, assist individual claimants in the preparation thereof, but all attachments to the notice of claim shall be furnished by the claimant.

(D) Number of claims and attachments. All claims and attachments thereto shall be filed in such quantity that one copy may remain on file with the clerk, one copy may be delivered to the claimant and one copy may be served on each defendant.

(E) Documents and information excluded from public access and confidential pursuant to Administrative Rule 9(G). -- Documents and information excluded from public access pursuant to Administrative Rule 9(G) shall be filed in accordance with Trial Rule 5(G).

Rule 3. Manner of service.

(A) General provision. For the purpose of service the notice of claim shall also be considered to be the summons. A copy of the notice of claim shall be served upon each defendant. Service may be made by sending a copy by certified mail with return receipt requested, or by delivering a copy to the defendant personally, or by leaving a copy at the defendant's dwelling house or usual place of abode, or in any other manner provided in Trial Rules 4.1 through 4.16. Whenever service is made by leaving a copy at defendant's dwelling house or usual place of abode, the person making the service also shall send by first class mail a copy of the notice of claim to the last known address of the person being served.

(B) [Applies to Marion County Small Claims Courts only]

(C) [Applies to Marion County Small Claims Courts only]

(D) Return of service. The person making service shall comply promptly with the provisions of Trial Rule 4.15. In addition, he or she shall state on the return of service if service was made by delivering a copy to a person, naming such person, or by leaving a copy at the defendant's dwelling or abode, describing the dwelling or abode and noting any unique features, and shall verify that a copy of the notice of claim was sent by first class mail and indicate the address to which the notice was sent. The clerk of court shall note the return of service on the Chronological Case Summary applicable to the case.

Rule 4. Responsive pleadings.

(A) Preservation of defenses. All defenses shall be deemed at issue without responsive pleadings, but this provision shall not alter the burden of proof.

(B) Entry of appearance. For the purpose of administrative convenience the court may request that the defendant enter an appearance prior to trial. Such appearance may be made in person, by telephone or by mail but the fact that no appearance

is entered by the defendant shall not be grounds for default judgment.

(C) Request for jury trial. Notwithstanding any statute to the contrary, a defendant may request a jury trial by submitting a written request to the court within ten (10) days after receipt of the notice of claim. No statement of facts supporting the request or verification of the request is required. The party requesting a jury trial shall pay the clerk the additional amount required by statute to transfer the claim to the plenary docket or, in the Marion Small Claims Court, the filing fee necessary to file a case in the appropriate court of the county.

Unless filed within ten (10) days after receipt of the notice of claim the right to a jury trial is waived. Once a jury trial request has been granted, it may not be withdrawn without the consent of the other party or parties.

Rule 5. Counterclaims.

(A) Time and manner of filing. If the defendant has any claim against the plaintiff, the defendant may bring or mail a statement of such claim to the small claims court within such time as will allow the court to mail a copy to the plaintiff and be received by the plaintiff at least seven (7) calendar days prior to the trial. If such counterclaim is not received within this time the plaintiff may request a continuance pursuant to S.C. 9. The counterclaim must conform with the requirements of S.C. 2(B)(4).

(B) Counterclaim in excess of jurisdiction. Any defendant pursuing a counterclaim to decision waives the excess of the defendant's claim over the jurisdictional maximum of the small claims docket and may not later bring a separate action for the remainder of such claim.

Rule 6. Discovery.

Discovery may be had in a manner generally pursuant to the rules governing any other civil action, but only upon the approval of the court and under such limitations as may be specified. The court should grant discovery only upon notice and good cause shown and should limit such action to the necessities of the case.

Rule 7. Pre-trial settlement.

All settlements shall be in writing and signed by the plaintiff and defendant. The settlement shall be filed with the clerk and upon approval of the court it shall be entered in the small claims judgment docket and shall have the same effect as a judgment of the court.

Rule 8. Informality of hearing.

(A) Procedure. The trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence except provisions relating to privileged communications and offers of compromise.

(B) Witnesses. All testimony shall be given under oath or affirmation. Witnesses may be called and the court shall have the power to issue subpoenas to compel their attendance. There shall be no additional fee charged for the issuance of subpoenas.

(C) Appearance. Any assigned or purchased claim, or any debt acquired from the real party in interest by a third party cannot be presented or defended by said third party unless this third party is represented by counsel. In all other cases, the following rules shall apply:

(1) Natural Persons. A natural person may appear *pro se* or by counsel in any small claims proceeding.

(2) Sole Proprietorship and Partnerships. A sole proprietor or partnership may appear by a designated full-time employee of the business in the presentation or defense of claims arising out of the business, if the claim does not exceed one $1,500.00. However, claims exceeding $1,500.00 must either be defended or presented by counsel or *pro se* by the sole proprietor or a partner.

(3) Corporate Entities, Limited Liability Companies (LLC's), Limited Liability Partnerships (LLP's). All corporate entities, Limited Liability Companies (LLC's), and Limited Liability Partnerships (LLP's) may appear by a designated full-time employee of the corporate entity in the presentation or defense of claims arising out of the business if the claim does not exceed $ 1,500.00.

However, claims exceeding $ 1,500.00 must be defended or presented by counsel.

(4) Full-Time Employee Designations -- Binding Effect of Designations and Requirements.

(a) In the event a corporate entity, sole proprietorship, partnership, LLC or LLP designates a full-time employee to appear in its stead, the corporate entity, sole proprietor, partnership, LLC or LLP will be bound by any and all agreements relating to the small claims proceedings entered into by the designated employee and will be liable for any and all costs, including those assessed by reason of contempt, levied by a court against the designated employee.

(b) By authorizing a designated full-time employee to appear under this Rule, the corporate entity, sole proprietorship, partnership, LLC or LLP waives any present or future claim in this or any other forum in excess of $ 1,500.00.

(c) No person who is disbarred or suspended from the practice of law in Indiana or any other jurisdiction may appear for a corporate entity or on behalf of a sole proprietor, partnership, LLC or LLP under this rule.

(5) Full-Time Employee Designations -- Contents. Before a designated employee is allowed to appear in a small claims proceeding, the corporate entity, sole proprietorship, partnership, LLC or LLP must have on file with the court exercising jurisdiction of the proceedings, a certificate of compliance with the provisions of this rule, wherein the corporate entity, sole proprietorship, partnership, LLC or LLP must expressly accept, by a duly adopted resolution in the case of a corporate entity, LLC or LLP; or a document signed under oath by the sole proprietor or managing partner of a partnership, the binding character of the designated employee's acts, the liability of the corporate entity, sole proprietorship, partnership, LLC or LLP for assessments and costs levied by a court and that the corporate entity, sole proprietorship, partnership, LLC or LLP waives any claim for damages in excess of

$1,500.00 associated with the facts and circumstances alleged in the notice of claim.

Additionally, the designated employee must have on file with the court exercising jurisdiction of the proceedings an affidavit stating that he/she is not disbarred or suspended from the practice of law in Indiana or any other jurisdiction.

Rule 9. Continuances.

(A) Either party may be granted a continuance for good cause shown. Except in unusual circumstances no party shall be allowed more than one (1) continuance in any case, and all continuances must have the specific approval of the court. Continuances shall be for as short a period as possible, and where feasible the party not requesting the continuance shall be considered in scheduling a new hearing date. The court shall give notice of the continuance and the new date and time of trial to all parties.

(B) Designating employee. The court may, by a duly executed order recorded in the Record of Judgments and Orders, designate a specifically named employee to be responsible for scheduling hearings under special directions spelled out by the court in said order.

Rule 10. Dismissal and default.

(A) Dismissal. If the plaintiff fails to appear at the time and place specified in the notice of claim, or for any continuance thereof, the court may dismiss the action without prejudice. If a counterclaim has been filed the court may grant judgment for the defendant after first making an inquiry similar to that required by S.C. 10(B) in the case of default judgments. If the claim is refiled and the plaintiff again fails to appear such claim may be dismissed with prejudice.

(B) Default. If the defendant fails to appear at the time and place specified in the notice of claim, or for any continuance thereof, the court may enter a default judgment against him. Before default judgment is entered, the court shall examine the notice of claim and return thereof and make inquiry, under oath, of those present so as to assure the court that:

(1) Service of notice of claim was had under such circumstances as to establish a reasonable probability that the defendant received such notice;

(2) Within the knowledge of those present, the defendant is not under legal disability and has sufficient understanding to realize the nature and effect of the notice of claim;

(3) Either (a) the defendant is not entitled to the protections against default judgments provided by the Servicemembers Civil Relief Act, as amended (the "Act"), 50 U.S.C. appx. §521or (b) the plaintiff has filed with the court, subscribed and certified or declared to be true under penalty of perjury, the affidavit required by the Act (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service; and

(4) The plaintiff has a prima facie case.

After such assurance, the court may render default judgment and, upon entering such judgment, shall assess court costs against the defendant.

(C) Setting aside default. Upon good cause shown the court may, within one [1] year after entering a default judgment, vacate such judgment and reschedule the hearing of the original claim.

Following the expiration of one [1] year, the judgment Debtor may seek a reversal of the original judgment only upon the filing of an independent action, as provided in Ind. R. Tr. P. 60(B).

Rule 11. Judgment.

(A) Entry and notice of judgment. All judgments shall be reduced to writing signed by the court, dated, entered in the Record of Judgments and Orders, and noted in the small claims judgment docket and the Chronological Case Summary. The Marion County Small Claims Court shall forward its judgments to the Clerk of the Circuit Court of Marion County for entry on the Marion County judgment docket. Judgment shall be subject to review as prescribed by relevant Indiana rules and statutes. Notwithstanding the provisions of T.R. 5(A), the court shall send

notice of all small claims judgments and all judgments of the Marion County Small Claims Court, whether by default or not, to the attorneys of record, or if a party is appearing *pro se*, to the party of record.

(B) Costs. The party recovering judgment shall also recover costs regardless of the amount.

(C) Method of payment -- Modification. The court may order a judgment paid the prevailing party in any specified manner. If the judgment is not paid as ordered the court may modify its payment order as it deems necessary.

The judgment creditor may seek enforcement of his judgment by any other method provided by law.

(D) Satisfaction/Release of Judgment. Upon payment in full of a judgment, including accrued interest and court costs, the judgment creditor shall file a satisfaction/release of judgment and the Clerk shall note the satisfaction/release of the judgment on the Chronological Case Summary and on the Judgment Docket.

Based upon a review of the Clerk's payment records, the Clerk may, or at the verified request of the judgment Debtor, shall issue a Notice to the judgment creditor that a judgment, including accrued interest and court costs, has been paid in full and that the judgment should be satisfied/released. The Notice shall be sent to the judgment creditor and Debtor at the address shown on the Chronological Case Summary. The Clerk shall note the issuance of the Notice on the Chronological Case Summary. If the judgment creditor does not agree that the judgment should be satisfied/released, the judgment creditor shall, within 30 days of the date of the issuance of the Notice, file a verified objection. If the judgment creditor does not file an objection or a satisfaction/release of judgment, the judgment shall be deemed satisfied/released and the Clerk shall note the satisfaction/release of the judgment on the Chronological Case Summary and on the Judgment Docket.

(E) Effect of judgment. A judgment shall be res judicata only as to the amount involved in the particular action and shall not be considered an adjudication of any fact at issue in any other action or court.

Rule 12. Venue.

(A) Proper venue.

(1) Proper venue for a case filed in the small claims docket of a Circuit or Superior Court shall be in the county where the transaction or occurrence took place, where the obligation was incurred or is to be performed, or where a defendant resides or is employed at the time the complaint is filed.

(2) Except as provided in (3) below, proper venue for a case filed in a small claims court created pursuant to IC 33-34-1-2 shall be in the township where the transaction or occurrence took place, where the obligation was incurred or is to be performed, or where a defendant resides or is employed at the time the complaint is filed.

(3) Proper venue of any claim between landlord and tenant, including but not limited to a claim for rent, possession of real estate, return of property, return of security deposit or for damages filed in a small claims court created pursuant to IC 33-34-1-2 shall be in the township where the real estate is located, unless there is no small claims court in that township.

(B) Motion to correct venue. When it appears that the county or township, in the case of small claims courts created pursuant to IC 33-34-1-2 in which the action is pending is not the proper place for the hearing of such action, the court shall, on the motion of a party or upon its own motion, determine the correctness of the venue. If the venue is incorrect the judge shall, at the option of the plaintiff, order the action to be transferred or dismissed without prejudice unless the defendant appears and waives the venue requirement.

(C) No waiver of venue. No contract or agreement shall operate as a waiver of the provisions of this rule and the court shall treat any such attempt as being void.

Rule 13. Small claims litigant's manual.

An informative small claims manual shall be formulated by the Judicial Conference of Indiana for distribution to the small claims courts. Each county shall reproduce such manual and shall make it available to every litigant and to such other persons or organizations as the court may deem appropriate.

Rule 14. Appointment of referee by circuit judge; compensation.

In any circuit court exercising small claims jurisdiction, the circuit judge may appoint a referee to assist the court in performing the "county court functions." Such referee shall be an attorney admitted to practice in Indiana and shall serve at the pleasure of the circuit judge. The referee shall have such authority as the circuit judge shall assign by order. The referee shall be a finder of fact -- the decision rendered will be that of the circuit judge.

Such referee shall be paid reasonable compensation, including a mileage allowance to be determined by the appointing circuit court judge. In recommending to the Supreme Court of Indiana appropriate compensation, the appointing circuit court judge shall consider the estimated caseload, the amount of work time needed to fulfill the assigned duties, and any other relevant factors relating to the referee's duties. Compensation shall be reasonably commensurate with the workload assigned. The amount authorized by the Supreme Court to be paid shall be paid by the state.

Rule 15. Method of keeping records.

Under the direction of the Supreme Court of Indiana, the Clerk of the Circuit Court may, notwithstanding the recordkeeping practices set forth for small claims proceedings, keep records in any suitable media. The recordkeeping formats and systems and the quality and permanency requirements employed for the Chronological Case Summary, the Case File, and the Record of Judgments and Orders (Order Book) shall be approved by the Division of State Court Administration for compliance with applicable requirements.

Rule 16. Order of possession of real estate.

(A) Time for requesting. An order of possession of real estate shall not be issued if more than thirty (30) days have passed since the judgment was issued. Thereafter, a plaintiff seeking possession may do so by filing a new case.

(B) Duration. An order of possession of real estate shall be effective for no more than thirty (30) consecutive days after its date of issue. The court shall indicate the specific date of expiration on the face of each order of possession.