

PREPARE
FOR YOUR DAY IN
SMALL CLAIMS COURT

JEFFERSON COUNTY, INDIANA

SMALL CLAIMS

MANUAL



**JEFFERSON SUPERIOR COURT
COURTHOUSE, SECOND FLOOR**

JUDGE MICHAEL J. HENSLEY

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MANUAL FOR SMALL CLAIMS COURTS

Message from the Judge

Dear Litigant:

Small Claims Court is designed to provide quick and easy access to the courts for people with a legal claim that is \$6,000.00 or less. Here in Jefferson Superior Court, we understand you may be very anxious about appearing in Court and filing your case or defending your case. Everyone who comes before this Court will be treated with dignity, courtesy and respect by the Judge, the Court staff and the Clerks. Everyone will be provided a fair and impartial trial. We will do all we can to provide helpful, friendly service as you prepare for your court date.

For Plaintiffs, this manual will try to help you decide if you should file a small claims case and if so, how to properly file your claim and present your case in Court. For Defendants, this manual will help you know your rights and how to best defend your case.

Trials in Small Claims Courts have relaxed rules of evidence and an informal method of presenting the case. But relaxed and informal do not mean the parties do not have to be prepared or follow the rules. Respect, courtesy and politeness are still expected and required by all litigants -- before, during and after a case has been heard in Court.

Judges in any Court must make their decision based on the evidence proven at trial and the law which applies to the facts of a particular case. So, it is very important that all litigants know what is involved at the trial and to be thoroughly prepared.

Please carefully read this manual. Many of your questions are answered right here in this manual. The State of Indiana website also has much helpful information about representing yourself and about Small Claims Courts. Check out www.in.gov/judiciary/selfservice. While we are pleased to help you with procedural questions and scheduling, we can never give you legal advice or talk about the facts of your case. Even though this is Small Claims Court, you are always welcome to consult with an attorney about legal questions.

We look forward to assisting you.

Judge Michael J. Hensley

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 Jefferson 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. 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.

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 2 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.

(4) 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 Jefferson 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) Jefferson 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-judgment interest and attorney fees (but not court costs).

If you believe the Defendant owes you more than \$6,000.00, you may want to file your claim on the Plenary Docket in either Jefferson Superior Court or Jefferson Circuit Court. 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 not 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 of 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. 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):
 - o Personal injury (injury to human being)
 - o 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):
 - o Promissory notes and contracts for the payment of money (loans)
 - o Accounts receivable o Contracts not in writing (other than a contract for a sale of goods)
 - o Rents and use of real estate (landlord-tenant disputes)
 - o Damages to real property (real estate)
 - o 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) 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.

- (4) 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).

- (5) 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 Prepayment 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).

- (6) 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 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, 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. 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.

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, then the small claims rules do not apply. 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.

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.

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.

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.

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 judgement.

Judgment Lien on Real Estate

Your judgment will be recorded in the judgment docket of Jefferson County. At the time your judgment is recorded, it then becomes a lien (hold) on any real property owned (not leased or rented) in Jefferson 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 Jefferson 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 Judgment, 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. It cannot be filed until at least 60 days have passed since the date of the judgement.

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 be 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.

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 \times 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.

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.

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.

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.

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.

EVICCTIONS (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. 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.

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.

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.

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. §521 or (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.