

# Indiana Rules of Court Small Claims

*Including Amendments Received Through January 1, 2011*

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### **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; and
    - (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 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 the 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)(1).** Documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) 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) **Designation of Constable in the Marion County Small Claims Court.** Pursuant to Trial Rule 4.12, the Marion County Small Claims Court judge may appoint the elected township constable and deputies as the persons specifically designated by the court to effect service in person. An order with the names of the respective constable and deputies shall be entered in the Record of Judgments and Orders of the particular division of the Small Claims Court.
- (C) **Designation of Manner of Service in the Marion County Small Claims Court.** A person seeking service of a notice of claim filed in the Marion County Small Claims Court, or his or her attorney, may designate upon the notice of claim the manner of service as either in person by the constable or by certified mail or other public means by which a written acknowledgment of receipt may be requested and obtained, as provided in Trial Rule 4.1. The judge of a Marion County Small Claims Court may designate by order an employee as bailiff for the purpose of effecting service of process by certified mail and collecting appropriate fees. If the manner of service is not designated by the person seeking service, the clerk of the court shall note such absence on the notice of claim and shall promptly deliver the notice of claim to the employee appointed by the court as bailiff or to the constable for service by certified mail. The cost for service is set by legislation, and there shall be no additional charge for first class mail delivery required pursuant to T.R. 4.1(B).
- (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.

#### **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. Pretrial 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 thousand five hundred dollars (\$1,500.00). However, claims exceeding one thousand five hundred dollars (\$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 one thousand five hundred dollars (\$1,500.00). However, claims exceeding one thousand five hundred dollars (\$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 one thousand five hundred dollars (\$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 one thousand five hundred dollars (\$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 specific 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 year after entering a default judgment, vacate such judgment and reschedule the hearing of the original claim. Following the expiration of one 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) **Release of Judgment.** Upon payment in full, including accrued interest, the clerk shall notify the judgment creditor and shall require him or her to file a release of judgment. If the judgment creditor fails to file a release of judgment within thirty (30) days of the issuance of the notice, the clerk shall note in the Chronological Case Summary that the judgment has been satisfied, and that the plaintiff has failed to release judgment pursuant to court directive, and the clerk shall note a release of judgment in the judgment docket.
- (E) Deleted, eff. Jan. 1, 1990.
- (F) **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.** Proper venue for a case filed in the small claims docket of a Circuit, Superior, or County Court shall be in the county where the transaction or occurrence actually took place or where the obligation was incurred or is to be performed, or where one of the defendants resides or has his or her place of employment at the time the complaint is filed.

Proper venue of any claim between landlord and tenant, including but not limited to a claim for rent, for possession of real estate, for return of property, for return of security deposit or for damages, filed in county small claims courts created pursuant to IC 33-34-1-2 shall be in the county and township division of the Small Claims Court where the real estate is located. In the event there is no court division existing in the township where the real estate is located, such claim may be filed in any of the townships of the county.

- (B) **Motion to Correct Venue.** When it appears that the county 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.

<b>Appendix A</b> Affidavit of Debt	<u>WordPerfect</u>	<u>Microsoft Word</u>	<u>Adobe PDF</u>
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