

# Adams County Small Claims Manual

( Revised January, 2022)

Adams County  
Small Claims  
Manual

## FILING FEES AS OF JANUARY 2022

- Paper filings for Court Costs are \$97.00 if your claim is against one person. \$10.00 is assessed for each party thereafter.
  - Example: 1 defendant=\$97.00, 2 defendants=\$107.00, etc.)
    - Service by Sheriff: \$28.00 is assessed to serve paperwork before Judgment. A \$28.00 service process fee shall be collected one time after judgment. The payment of these fees shall be collected by the Clerk.
    - Service by Certified Mail (Paper Filings Only): Filing fees include the cost of serving 2 parties at one address each at initial filing. For service at additional addresses or upon parties and after initial filing, the requesting party shall serve upon parties with the Clerk's return address.

Adams Superior Court 122  
South Third Street  
Decatur, Indiana 46733  
(260)724-5347

Adams Clerk of the Circuit Court  
112 South Second Street A  
Decatur, Indiana 46733  
(260)724-5309

## TABLE OF CONTENTS

Application of Manual	i
Important Information about Suing in Small Claims Court	i
Introduction	i
Definitions	ii
Before You File Your Claim	2
What You Can and Cannot Sue for in Small Claims Court	2
Location (Venue) for Filing Your Claim	3
Parties to the Suit	3
Change of Address or Telephone Number	3
Deadline for Filing Suit (Statute of Limitations)	4
Filing a Small Claim	4
Eviction Procedures	6
Representation at the Trial – Attorneys	6
Corporations – Representation in Small Claims Court	6
Sole Proprietors and Partnership (Unincorporated Businesses)	7
Counterclaims	8
Payment Before Judgment	8
Jury Trials	8
Settlements	9
Continuances	9
Change of Judge	9
Trial	10

Burden of Proof	10
Witnesses and Exhibits for Trial	11
Judge's Decision – Judgment	12
Plaintiff Fails to Appear at Trial	12
Default Judgment	13
Vacating a Default Judgment	13
Appeal	13
Collection of Small Claim After Judgment	13
Release of Judgment	15
What All Landlords and Tenants Should	15
Know Forms and Checklist Used in Small	19
Claim Actions	

## **Application of Manual**

This manual has been prepared to provide you with general knowledge of the operation of Small Claims Court in Adams County.

Please read it in its entirety. It will not address all areas of law or procedure, but it does deal with many problem areas experienced in small claims court and, hopefully, will aid you in preparing your case. If you have questions about a particular procedure, practice, or Court policy, check with the Clerk's Office; he/she may be able to assist you.

If you ask a question of the Court or the Clerk staff that is explained in this manual, you will be advised to locate your own answer within the packet. Please bear in mind that not all cases are "typical" and each has special circumstances that makes it different from any other. Because of this, your case may produce questions that are not covered in this manual. It is then acceptable to ask questions of the staff.

Although the Clerk's staff, nor the Court staff, can give legal advice, they will attempt to answer any questions you may have **AFTER YOU HAVE READ THE MANUAL**. At any point a question is considered too technical or legal in nature, the personnel will refuse to answer, and will instead instruct you to research the question yourself or speak with an attorney for advice.

## **Important Information about Suing in Small Claims Court**

Small Claim Courts have simple rules of procedure that allow you to represent yourself without an attorney. As a result, many feel that all you need to do to win your case is to appear in Court on the day of the trial. Others feel that it's the Judge's job to develop and help present evidence at trial. Still others believe that there is some "magic" associated with the courtroom or that the Judge has supernatural insight that helps him or her to find the truth without the benefit of evidence. None of these beliefs is correct.

The Judge's job is simply to settle a dispute between two (2) or more parties that cannot be resolved amongst them. The Judge's decision must be based solely on the evidence given by the parties at the time of the trial and in accordance with the applicable law. The Court, like a hammer or saw, is only a tool that you may use to settle your dispute. Like any tool, the end product will show your skill in using the tool. A good case could be lost if you do not prepare your case before trial or if you fail to effectively present evidence when you get to trial. Proper preparation and effective presentation of evidence greatly increases your chances of being awarded a judgment in Court.

## **Introduction**

The Small Claims Court allows every citizen to bring a lawsuit in an informal manner and does not require that a party hire an attorney. You may hire an attorney if you so choose; however, in most instances you will be unable to recover your legal fees from

the opposing party, even if you win, unless there is a written agreement making the other party liable for such expenses.

The Small Claims Courts were created so that you would have a speedy, reasonably inexpensive, uncomplicated means of determination of your claim. It is for your benefit and it is your right. Do not be afraid to use it. The Court's staff and the Clerk's staff can assist you, but once again, they cannot give you legal advice.

The procedures are not complex. The Plaintiff fills out a simple form called a *Notice of Claim* form stating why the Defendant owes him or her money or that the Defendant has property which should be returned to the Plaintiff. Each party explains his or her side of the story to the Judge at trial. The Judge may ask questions of each party to determine the complete facts of the case. The Judge will make a decision based upon the facts and evidence presented by the parties and on the law as it applies to the facts.

### **Definitions**

Agreed Judgment – A written agreement between opposing parties that will settle the dispute, subject to the Judge's approval.

Affidavit – A written statement made upon 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.

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 filed 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, or his or her rights or property.

Interrogatories – Written questions.

Judgment – The decision of the Court.

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

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

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

Party – Any person suing or being sued.

Personal Property – Movable 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 date 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.

Proceedings Supplemental – A written pleading filed with the Court that asks for additional steps to be taken to collect a judgment.

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

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

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.

Third Party – A person involved in the case 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 in which the case must be filed.

## **Before You File Your Claim**

Before you fill out the forms to file your claim, please answer these questions (each is explained in this booklet):

- (a) Does the Small Claims Court have the authority (jurisdiction) to hear your case?  
Yes No
- (b) Is this county the proper location (venue) for the filing of your claim? (See Page 1)  
Yes No
- (c) Who are the parties to the action? (See Page 2)
- (d) Is it too late under the Statute of Limitations to file your claim?  
Yes No

Only if the answers to Questions (a) and (b) are both “yes” and the answer to (d) is “no” may you file a small claims action in this county.

## **What You Can and Cannot Sue for in Small Claims Court**

There are many times when you may sue in Small Claims Court. The following list contains some examples:

- (a) Personal injury, Ten Thousand dollars (\$10,000.00) or less.
- (b) Damage to personal property or real estate, Ten Thousand dollars (\$10,000.00) or less.
- (c) Landlord and tenant disputes, if the rent due at the time of filing is Ten Thousand dollars (\$10,000.00) or less.
- (d) Money owed (bad checks, wages, services rendered, accounts receivable), Ten Thousand dollars (\$10,000.00) or less.
- (e) Return of wrongfully taken property and return of money paid for faulty work, Ten Thousand dollars (\$10,000.00) or less.

As you may have guessed from the above examples, by Indiana law, Small Claims are currently limited to cases where the amount sought to be recovered is Ten Thousand dollars (\$10,000.00) or less. From time to time, the Indiana Legislature changes this upper limit on Small Claims cases. This maximum value was raised from Eight Thousand dollars (\$8,000.00) to its current limit of Ten Thousand dollars (\$10,000.00) on July 1, 2021, so you should ask the Clerk if your claim may exceed this amount.

If you hire an attorney, you probably will not be able to get attorney’s fees as part of any judgment. Exceptions to this rule do exist, such as when a written agreement calls for the payment of attorney’s fees or in the case of a bad check. Also, there are limits on the rate of interest you can ask.

## **Location (Venue) for Filing Your Claim**

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

- (a) in which the transaction or occurrence actually took place; or
- (b) in which the obligation or debt was incurred; or
- (c) in which the obligation is to be performed; or
- (d) in which the Defendant resides; or
- (e) in which the Defendant has his or her place of employment at the time the claim or suit is filed.

The county in which the suit is filed must meet one of the above requirements in order to be the proper county of venue. If several counties qualify under the requirements, then the Plaintiff can file suit in any one of the qualifying counties. If a claim is filed in the wrong county, the plaintiff runs the risk of having the claim dismissed. This means that the plaintiff will not be reimbursed for the court costs previously paid. The plaintiff does have the option to then file his or her case in the appropriate county, with court costs once again being assessed.

## **Parties to the Suit**

The plaintiff is the person or business who files the suit asking the Court to help collect an obligation or to grant some other relief from another person or entity.

The Plaintiff must be the person or business to whom the money is due. For example, an apartment building manager cannot sue a tenant because the manager is merely an employee. It must be the landlord who brings the lawsuit.

The Defendant is the person or business which is being sued and who must defend against the charge of the Plaintiff. If more than one person is responsible, then all Defendants should be named in one suit.

## **Change of Address or Telephone Number**

If you change your 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. All notices concerning your suit, including any changes of the trial date, will be sent to your last known address. Your interests may be hurt if the Court is unable to contact you due to a change of address. Even though the parties are advised to notify the Court of this information, sometimes Defendants move without supplying a new address. To continue any action in the suit, it therefore becomes the responsibility of the Plaintiff to find the Defendant. Neither the Court nor the Clerk's staff will supply you with this information. Remember, written notification of a change of address or telephone number must be sent to the Court or Clerk's Office.

## **Deadlines for Filing Suit (Statute of Limitations)**

Before filing your lawsuit, you must be sure that the suit is filed within the time period provided by the statute of limitations. You cannot bring suit if the time limit has expired. The time limit begins to run for a contract when the contract is breached (broken) and for personal injury or damages to property when the injury occurs. A list of some of the most common statutes of limitations is set out below. (This is not an exhaustive listing of the statutes in the Indiana Code.)

- 1) Two Years
  - A) Personal injury (that is, injury to a person as opposed to damage to property).
  - B) Damage to personal property.
- 2) Six Years
  - A) Accounts.
  - B) Contracts not in writing (other than a contract for sale of goods).
  - C) Rents and use of real estate (landlord/tenant disputes).
  - D) Damage to real estate.
  - E) Recovery of personal property.
  - F) Promissory notes and/or a contract for payment of money.

## **Filing a Small Claim**

If you wish to file a lawsuit against another person, you must follow these rules.

- 1) You must fill out the required [\*Notice of Claim\*](#) form by briefly and clearly stating in writing the nature and amount of your claim against the Defendant. You will have an opportunity to explain more fully in Court. You will find the above-mentioned form, and all other forms that you may need throughout this proceeding, attached at the back of this manual. **These are your originals!** Please make copies as you need them and keep the attached forms as originals. The [\*Notice of Claim\*](#) form is copied on both sides and must be submitted as such upon filing. If you cannot make a two-sided copy, it is acceptable to submit the form as two (2) separate pages. No matter how you choose to present the form to us, it is mandatory that both sides are included. You must provide the Clerk's Office with a completed [\*Notice of Claim\*](#) and [\*Affidavit of Debt\*](#) form, along with supporting paperwork (proof of the amount that you are asking). You will also need to provide a copy of the above-mentioned Notice and paperwork for each defendant, plus another for yourself if you'd like a copy returned.
- 2) If your suit is based upon a written contract or account, that would be considered your supporting paperwork and will be your proof to attach to your [\*Notice of Claim\*](#).

- 3) You must give the Clerk the correct name, address and telephone number of the Defendant. Be sure the named Defendant is the real party in interest. For example, following an automobile accident, you should sue the driver of the other vehicle, not his or her insurance company.
- 4) Filing fees must be paid when you submit the claim. Please refer to the top page of the manual for current fees. There is a \$10.00 for each additional defendant. If the Sheriff serves any paperwork before a judgment entered against the defendant, a fee of \$28.00 must be paid. After you have received a judgment, you will be required to pay an additional \$28.00 for the Sheriff to serve any papers. If you win your case, the Defendant will most likely be ordered to repay this money to you. You will not be repaid if you lose.

If you have questions about filing your suit or any other matters relating to your case, ask the Clerk for help. If you need legal advice, you must talk to an attorney. Neither the Judge nor the Clerk can help you with legal advice.

An Eviction may also be requested in a Small Claim action for landlord/tenant disputes, but this is explained in greater detail on the following page. Not all landlord/tenant disputes involve an eviction, so it is not assumed that you wish the tenant(s) to remove him or herself from the premises. Please see [“What All Landlords and Tenants Should Know”](#) for further information.

You will receive a copy of the [Notice of Claim](#) that is filed with the Clerk, along with a receipt for filing fees. This copy has a Court appearance date and time listed. You should check with the Court staff to find out if you will be expected to have all witnesses and evidence with you on this date. In many Courts this first trial date is used merely as a date to find out if the Defendant is going to dispute your claim. If the Defendant does not show up for this first date after receiving proper notice from the Clerk or if the Defendant does appear and both parties can come to an acceptable agreement, then a trial will be unnecessary. On the other hand, if the Defendant disputes all or a portion of your claim, the Judge may set the trial for a later date.

Notice of the suit must be served upon the named Defendant prior to the hearing date. If the Clerk or the Sheriff is unable to find and notify the Defendant of the lawsuit before the date to appear, you may either dismiss the suit, which states that you will take no further action in this matter, or request a continuance of the trial date in order to have more time to notify the Defendant of the suit. If such a continuance is requested, you must again fill out the appropriate number of copies of the [Notice of Claim](#), (i.e.: the original [Notice of Claim](#) form that stays in the file, plus one for each party. If sheriff’s service is to be used, you must provide an additional copy for each defendant that you wish to be served). This [Notice of Claim](#) is now called an “*Alias Notice of Claim*” and you should once again attach any relevant exhibits. You may also be required to obtain a more current address for the Defendant.

You may withdraw or dismiss your claim any time prior to trial, but you will not be reimbursed for Court Costs previously paid. This fee must be collected from the Defendant unless you choose to forego said amount.

If the Defendant has information you need to pursue your claim, but will not give it to you, you may request the Court to order the Defendant to disclose this information to you. The Defendant may also make such a request to the Court in order to prepare a defense. This request will be granted only if you give good reason for disclosing the information and only after the other party has been notified of your claim and that the information is being sought. The Court may limit

the information sought to that which is necessary for this particular case. This process of seeking information for the party before trial is called “Discovery.”

### **Eviction Procedures**

You may also request eviction proceedings through Small Claims in the occurrence of a landlord/tenant dispute, but you must specify on the initial [Notice of Claim](#) that this is your intent. You should indicate this in the summary portion of the [Notice of Claim](#) form and you **must also write “plus eviction” after the grand total at the bottom of said form.** Not all landlord/tenant disputes involve an eviction, so it will not be assumed that you wish the tenant(s) to remove him or herself from the premises. Should you have any further questions after reading the following paragraphs, please refer to [“What All Landlords and Tenants Should Know”](#), as your question may quite possibly be answered there.

If Landlord gives tenant(s) a Notice to Vacate Property, a copy of the written notice must be dated and attached to the [Notice of Claim](#) paperwork. If given to the tenant by the landlord, the tenant should sign and date the notice as proof of service. The Sheriff may also serve the notice. Make two (2) copies of the notice so the Sheriff has a copy to leave with the tenant and another to return to you (the landlord). Please check with the Sheriff to see what fee is charged for this service.

If the tenants have not moved out pursuant to appropriate time limitations, you may now file a formal eviction through Small Claims. You will also need to provide a copy of the lease and any security deposit information plus payment for Court Costs. A hearing date will be set within two (2) weeks of filing your claim. The claim for eviction, plus back rent and/or damages, cannot exceed the dollar limit at the time of filing. After the premises has been evacuated, you may request another hearing if damage has been made to your property. The total amount due still must be within the limit set by the State of Indiana.

If it becomes necessary for you to ask for a hearing to determine damages, and by doing so your new total now exceeds the allowable limit, you should then seek the advice of legal counsel. Your case may need to be transferred to the Civil Docket and you will be required to pay the difference between the Small Claim court costs and the Civil Court costs.

**SEE EVICTION MANUAL FOR FURTHER FORMS AND INSTRUCTIONS**

### **Representation at the Trial – Attorneys**

[Small Claims Rule 8](#) allows a person to appear at trial and, if he or she chooses, represent himself or herself to avoid the cost of hiring an attorney. However, a person is allowed to hire an attorney to be present with him or her at the trial. A person who has power of attorney for another person may not represent that person in Court.

### **Corporate Entities, Limited Liability Companies (LLC’s) and Limited Liability Partnerships (LLP’s)**

As a general rule, a corporation must appear by counsel. [Small Claims Rule 8](#) provides an exception for certain claims. A corporation, whether as a Plaintiff or a Defendant, may be represented by an employee who is not an attorney if the following conditions exist:

- 1) The claim (for or against the corporation) is not more than the prescribed limit set by [Small Claims Rule 8\(c\)](#) (\$6,000.00); and
- 2) The claim is not an assignment (such as a claim that has been assigned to a collection agency); and
- 3) A corporate resolution and employee affidavit filed with the Clerk authorizing a full-time employee to represent the corporation.

You will find a [Resolution](#) including Designation of Employee form within the Small Claim forms section of this manual. It is mandatory that the original is given to the Clerk's Office, where it will be kept on permanent file. **A Resolution must be attached to each claim that is filed.** Be certain to retain a copy so that you will have it to copy and attach to any future filings. **NOTE:** A form is needed for each assigned employee.

### **Sole Proprietors and Partnerships (Unincorporated Businesses)**

As a general rule, an unincorporated business must be represented by the owner of the business or by an attorney. [Small Claims Rule 8](#) provides a limited exception for certain claims filed in Small Claims Court. A business, operated as a sole proprietorship or partnership, may (whether as a Plaintiff or Defendant) be represented by an employee who is not an attorney if the following conditions exist:

- 1) The claim (for or against the business) is not more than the prescribed limit set by [Small Claims Rule 8\(c\)](#) (\$6,000.00); and
- 2) The claim is not an assignment (such as a claim that has been assigned to a collection agency); and
- 3) The business files with the Clerk an Employee Affidavit and Certificate of Compliance designating a full-time employee to represent the business. This form is called a Resolution including Designation of Employee and you will find one attached in the forms section of this manual.

The following situations are not permissible:

- 1) If the claim involves a corporation and is less than the prescribed limit, an employee NOT authorized by the resolution attempts to represent the corporation.
- 2) If the claim involves a business operated as a sole proprietorship or partnership and is less than the prescribed limit, an employee NOT authorized by the Certificate of Compliance attempts to represent the business entity.
- 3) If the claim involves a corporation and is greater than the prescribed limit, a non-attorney attempts to represent the corporation.
- 4) If the claim involves a business operated as sole proprietorship or partnership and is greater than the prescribed limit, an employee who is not an owner attempts to represent the business. (In such cases, the owner or an attorney must represent the business.)
- 5) A person with only a power of attorney to act on behalf of any individual, business, or corporation attempts to represent the individual, business, or corporation in Court.

NOTE: Assigned claims (collection agencies) must have an attorney, regardless of the amount of the claim.

## **Counterclaims**

If you are the Defendant and have received notice that you have been sued in Small Claims Court and you believe that you have any monetary claim against the Plaintiff, you may file a [Counterclaim](#) against the Plaintiff.

You must file your [Counterclaim](#) with the Court so there is sufficient time to mail a copy to the Plaintiff so he or she receives it at least seven (7) days before the trial. If the Plaintiff does not receive the [Counterclaim](#) within that time, the Plaintiff may request a continuance (postponement) of the trial to allow time to prepare a defense to your [Counterclaim](#).

The Court can only hear [Counterclaims](#) if they do not exceed the current dollar limit listed earlier in this manual. As the Defendant, you may agree to sacrifice the amount over this limit in order to be able to sue in Small Claims Court. However, if you do this, you are not permitted to file a new suit later for the rest of the claim. If you do not want to give up the excess amount, then you may request or petition the Court to transfer the case to another Court or division of the same Court. In response to such a request or petition, the Court may transfer your [Counterclaim](#), or the entire case, to another Court or division where Small Claims Rules no longer apply. If this occurs, you and the other party should then hire attorneys to represent you.

If the Defendant files a [Counterclaim](#), the Court will hear the Plaintiff's complaint and the Defendant's [Counterclaim](#) at the same hearing.

If you are the Defendant and you believe that another person, who is not a party to the suit, may be responsible to you for all or part of the Plaintiff's claim, you may file a *Third-Party Notice of Claim* against that person. This must be done before the trial. To do this, complete a [Notice of Claim](#) form naming the person whom you believe to be responsible as the "Third-Party Defendant" and explain on the form why you believe this person should be held responsible.

## **Payment Before Judgment**

Within this packet you will find a [Voluntary Motion to Dismiss](#). If the Defendant pays the claim in full before a judgment is entered, you must dismiss any further action in this case. This form is to be signed and returned to the office of the Clerk within thirty (30) days of receiving full payment. Once filed, the Judge will sign this pleading and copies will be issued to parties of record. Any hearings will be cancelled if payment in full is received. Likewise, if a payment is made but there is still an outstanding balance, the Court hearing will proceed as scheduled unless you request a continuance or agree to forego the balance due.

## **Jury Trials**

When the Plaintiff files a claim in Small Claims Court, the Plaintiff waives or gives up the right to a trial by jury. If the Defendant wants a jury trial, it must be requested no later than ten days after the Defendant is served with the [Notice of Claim](#). The Defendant demands a jury trial by filing an Affidavit and paying another fee. The Affidavit must state that there is a question of fact in the case which requires a jury trial, must explain this fact (or facts), and must state that the request for a jury trial is made in good faith. The transfer fee must be paid within ten (10) days after the jury trial request has been granted, otherwise the party requesting the jury trial has waived the request. If a jury trial request has been granted, it may not be withdrawn without the consent of the other party or parties.

If the Defendant properly requests a trial by jury, the case will lose its status as a Small Claim and will be transferred to the Court's Civil Docket. The Civil Docket requires a much more formalized procedure. At this point, all formal rules of evidence and procedure apply to the trial of the case and both parties should seriously consider consulting legal counsel for assistance.

## **Settlements**

If the Plaintiff and the Defendant are able to reach a settlement of the dispute before the trial, the parties should write down the settlement and, after signing the agreement, file it with the Clerk. The Judge will approve the settlement and enter the agreement as a judgment.

The Court cannot and will not receive personal property in settlement or judgment except under circumstances with the Judge's approval. Do not request the Court to receive personal property for you in connection with a settlement or judgment.

## **Continuances**

Continuances (postponements) are only granted if good cause is shown. Except in unusual circumstances, no party shall be allowed more than one (1) continuance in any case and each continuance must be specifically approved by the Judge. Notice of the new date and time of the trial will be provided to all parties. Parties should appear at all hearings or trials unless specifically told by the Judge's or Clerk's staff that the matter has been continued.

## **Change of Judge**

You may request a change of Judge, but strict time limits apply. A party seeking a change of Judge must file that 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.

## **Trial**

Arrive on time for your trial. If both parties appear at the time and date scheduled, the trial will be held in an informal, yet orderly manner. The Plaintiff will present his or her case first. The Plaintiff may do this by testifying on his or her own behalf and also by having other witnesses, including the Defendant, testify. After testimony of each witness, the Judge may allow the Defendant to cross-examine the witness by asking questions. As the Plaintiff's case is presented, physical evidence such as receipts, written leases, or other items to support the Plaintiff's claim for damages may be shown to the Judge.

When the Plaintiff has finished, the Defendant may testify, present witnesses and physical evidence. After each of the Defendant's witnesses has testified, the Judge may allow cross-examination by the Plaintiff.

After the Plaintiff has finished with any contradicting testimony, each party may, at the Judge's discretion, make a final statement to the Judge to sum up his or her position.

Remember, although the trial is informal, all parties and witnesses are subject to penalties for contempt of Court and perjury.

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

Remember that the Judge can base a decision only on the facts presented at the trial and on the law as it applies to those facts. Therefore, know as much about your claim as possible and tell the Judge as much as you can. You should lay a solid foundation for your claim as to date, parties involved, actions taken or not taken, and damages occurring. Bear in mind that the Judge is totally without knowledge of the events surrounding your claim and can only rely on the information presented at trial as a basis for a decision.

## **Burden of Proof**

If you are trying to recover damages, as the Plaintiff on a claim or as a Defendant on a [\*Counterclaim\*](#), you have the burden of proving your case by a preponderance of the evidence. In other words, to win, your evidence has to be more convincing than that of the opposing party. If each party's evidence is equal, 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 to be believed, the Judge must decide the case in favor of the person you are suing.

The party trying to recover damages must prove two (2) things before the Court can award a judgment:

- 1) **Liability:** You must prove by your evidence that the other party has done something that makes him or her liable to you for damages. Examples of this would be that the other party has failed to pay rent owed; caused an accident resulting in damages to your property; or ordered and received goods without paying for them.

- 2) Damages: You must also then prove the actual amount of damages (money) which you believe you are entitled to recover.

This area is one of major concern for the Small Claims Court, and one of tremendous frustration to a person who files suit but is not well prepared to present his or her claim or [\*Counterclaim\*](#). The law provides that a party seeking judgment must prove both liability AND damages before a judgment may be entered in his or her favor. The Judge cannot speculate or guess what damages were caused or how much should be awarded for damages. If a party cannot produce evidence to show the amount, the Judge cannot award a judgment.

Often parties have been able to present enough evidence to show liability but then fail to show the dollar amount of the damages. In such cases, the Judge cannot guess at this figure and must decide in favor of the alleged wrongdoer.

What kind of evidence can be used to show damages? The general rule is that the proper amount of damages to be awarded is the difference between the value of the property before the accident or event and the value of the property after the accident or event, although a repair estimate may be sufficient to establish the amount of damages in a Small Claim action.

Example: The Plaintiff and the Defendant are involved in an automobile accident. The cause of the accident was due to the Defendant's negligence. To prove damages at trial, the Plaintiff may show either a written estimate of the cost to repair or the difference between the market value of the automobile before and after the accident. The "market value difference" may be proven either by oral testimony or written evidence from a qualified person. But the Plaintiff may not always plead for the greater damages. The injured party has a duty, where reasonable, to keep the damages as low as possible. Therefore, where the "market value difference" is much greater than the cost to repair, and repair of the car is reasonable, the Plaintiff must ask for damages in the amount of the cost to repair. However, where the repair costs are much higher than the "market value difference," the measure of proper damages may be the difference between the market value of the car before and after the accident.

If your damages include a claim for labor, remember that mere speculation as to future labor costs will not be considered by the Court in computing damages, although estimates by an expert would be proper evidence. An example of such an expert would be an auto mechanic. Evidence establishing sums actually spent for labor would also be proper evidence.

The area of burden of proof and proof of liability and damages is very important to the party seeking recovery for damages. If you are not sure what proof is needed at trial, you should seek legal advice. You could then decide to hire the lawyer to represent you at the trial or, after being advised of what the law requires, continue to represent yourself.

If at the time of trial you feel that more damages have occurred between the date you filed your [\*Notice of Claim\*](#) and the date set for trial, such as rent due, newly discovered damage to property, interest account, etc., before the trial, you may ask the Court to allow you to amend (change) your [\*Notice of Claim\*](#) to include new damages.

### **Witnesses and Exhibits for Trial**

A party should try to get all witnesses to attend the trial. If a witness does not want to appear and testify voluntarily, a party may request the Clerk to issue a [Subpoena](#) ordering the witness to appear. Requests for [Subpoenas](#) should be made at the earliest possible date.

It is often important to the case that the proper documents or other exhibits be brought to the trial and shown to the Judge. Exhibits are identified by the Court Reporter and become a part of the court record of the trial and can be returned after thirty (30) days if a Notice of Appeal has not been filed. Please be aware that it is not office policy to automatically return evidence to you. After the thirty (30) days have passed, you must notify the Clerk, either in person, in writing or by telephone, that you wish to retrieve your documents. They remain a part of the original record if no notice is received. If, for any reason, you must keep the original documents, bring photocopies. If the Judge is satisfied as to the genuineness of the copies and there is no objection by the other party, the photocopies may be identified and made part of the court record of the trial in place of the original documents.

Attendance of witnesses and the presence of exhibits at the trial are the sole responsibility of the parties.

### **Judge's Decision – Judgment**

The Judge may make a decision at the end of the trial or take the matter under advisement to make a decision at a later date. Notice of the Small Claims judgment, including default judgment, will be sent either to the attorneys of record if the parties are represented or to the parties. The judgment will then be entered into the court record.

If a judgment is awarded in your favor, you are entitled to add interest onto the principle. However, you also have the right to decide not to collect interest. The choice is yours. The current interest amount allowed by statute is 8% and the law allows interest to accrue on a judgment from the date a judgment is rendered. For your convenience, this amount will be computed by the Clerk's office and added to the outstanding balance.

Once you have received full payment of your judgment, you will be required to release the judgment. This is done by filing a [Release of Judgment](#) with the Clerk. Said form should be signed and returned no more than thirty (30) days from the date of the final payment. It is your responsibility to see that this case is released when you have received the amount due to you.

### **Plaintiff Fails to Appear at Trial**

If the Plaintiff fails to appear for trial, Small Claims Rules provide that the Court may dismiss the claim without prejudice. If the claim is dismissed without prejudice, the Plaintiff can once again file the claim by 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 attempting further action in the case. Be sure to check the local court rule or procedure on the consequences of failing to appear at trial.

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](#). (For the requirements, see [Default Judgment](#) below.)

## **Default Judgment**

If at the trial the Plaintiff shows up and the Defendant does not, the Plaintiff can ask for a default judgment against the Defendant for the amount stated in the original claim.

For the Judge to grant the default judgment, the Plaintiff must prove the following:

- 1) That the Defendant was timely served with notice of the claim.
- 2) That, so far as the Plaintiff knows, the Defendant has no legal, physical, or mental disability that would prevent him or her from attending the trial or from understanding the nature of the proceedings.
- 3) That the Plaintiff has a valid claim and should recover from the Defendant.

To do this, the Plaintiff may sign affidavits, or in some case the Court may require the Plaintiff to give testimony from the witness stand.

## **Vacating a Default Judgment**

The party against whom a default judgment has been entered may file a written request with the Court to have the Default Judgment vacated, or set aside. Such a request must be filed within one (1) year of the date the judgment was entered. If the request is properly filed, the Judge will hold a hearing for the parties to appear. The party requesting the overturning of the default judgment must show “good cause” for vacating the judgment. If the Judge vacates the judgment, the case will be scheduled for a new trial on the original claims of the parties.

If the one (1) year period has passed, the party seeking to set aside a default judgment can file an action to reverse the original judgment only by following Trial Rule 60(B) of the Indiana Rules of Trial Procedure. This would best be accomplished with the help of a lawyer.

## **Appeal**

If one or both parties are unsatisfied with the Court’s decision and judgment, an appeal of the decision may be taken to the Indiana Court of Appeals. To qualify for appeal, the appealing party must take certain action within thirty (30) days of the Small Claims Court judgment. Due to the complicated rules for taking an appeal, the party seeking the appeal should consult legal counsel as soon as possible after the judgment has been entered.

## **Collection of Small Claim After Judgment**

If you are the winning party, the judgment entered by the Court is a legal determination that another person owes you a certain sum of money, and Court costs.

Your judgment will be recorded (i.e., entered and indexed) in the Judgment Docket of this county. At that time, it becomes a lien on any real property owned by the debtor in this county, now or in the future. For your judgment to be a lien on real property in another county in this state, it must be recorded in that county. This is done by obtaining a certified copy of the judgment from the Clerk’s Office and delivering it, along with any necessary fees, to the Clerk of the county in question for registering in that county’s judgment docket. The judgment then becomes a lien on the debtor’s real property in that county. Once the judgment is recorded, the judgment lien exists for a period of ten (10) years. At the end of the ten year period, the lien against will expire. However, the lien can be extended for another ten year period by bringing an action on a judgment

within the ten year statute of limitations found in Ind. Code 34-1-2-2(6) prior to the expiration of the lien.

Although the judgment lien expires after ten (10) years as a general rule, the judgment itself may be enforced for up to twenty (20) years after its entry. The expiration of the lien on real property will prevent the judgment creditor from collecting his or her judgment through execution on real property. After the expiration of twenty years, a judgment is deemed satisfied under Ind. Code 34-1-2-12. The presumption of satisfaction is not conclusive and can be rebutted by the judgment creditor.

Collecting a judgment is your responsibility. The time it takes to collect depends upon both your diligence and the debtor's ability to pay. When judgment is entered, payment may be ordered in full or by installments. In addition, the Court will order that the payments be made to the Clerk's office. Since all payments are to be made to the Clerk, please consult that office for instructions if you are offered a direct payment. This is necessary so that proper accounting records can be retained. When payments are made to the Clerk, neither that office nor the Court will monitor payments. It is not the responsibility of either office to know if the Defendant makes late payments or misses 1 altogether.

Office policy will not allow payments to be personally picked up from our office; all checks will be mailed to the receiving party. The Clerk writes checks from the office account on a weekly basis, but certain accounting procedures must be performed. Because of this, there will be a small amount of time before you receive your money. Typically, a check is issued to you no later than the week following its receipt. There are, of course, certain circumstances that could cause a payment to be delayed, but this happens rarely.

Because of the high volume of cases handled by this office, it is no longer possible for the staff to check for payments. This is your responsibility. There are 2 computers located in the main hall that are at your disposal. You have unlimited access to check on the status of your case(s). For these computers, there is always an instruction sheet on the computer stand for your convenience. In addition to checking for payments, your case history is also available. A case history, also called a CCS, allows you to view all actions that have occurred in your case. Therefore, if you have questions about the status of your case or what form should be filed next, you will most likely be able to answer your own question by reviewing your case on the computer or by consulting this manual. If payment has not been made, you then have several legal methods of collection.

Filing a *Motion for Proceedings Supplemental* and an *Order to Appear* (attached) is the first step. However, please allow the Defendant at least thirty (30) days to begin making payments. If no payments have been made within that time, you may proceed with this step. When a *Proceedings Supplemental* is filed, the debtor is ordered to appear in Court and answer questions under oath about his or her ability to pay based upon income, assets, liabilities, family size, etc. If you know that the debtor has a job and know the address of his or her employer, you may ask the Clerk to issue *Interrogatories* to the employer when you file the *Proceedings Supplemental*. The Court can determine from the answers to the *Interrogatories* whether the debtor has wages that can be garnished.

At the hearing, you will have an opportunity to ask the debtor, or inform the Court, about the debtor's ability to pay. At the end of the hearing, the Judge may order any of the following:

- that the Defendant pays the judgment in full or in installments (the installments may be modified at any time in the future);
- that the Defendant supplies the Court with current information regarding employment status and address;

- that the Defendant is to reappear sometime in the future to provide additional information;
- that the Defendant's wages are garnished;
- that an execution against the debtor's personal property be entered;

At any time in the future, if the debtor fails to follow a Court order or if you believe that there has been an improvement in the debtor's ability to pay, you may ask that the debtor be ordered back to Court. This can be done throughout the lifetime of the judgment.

If the debtor is served with notice of the hearing and does not attend, a [\*Contempt of Court Citation\*](#) (also called a [\*Rule to Show Cause\*](#)) can be entered. The Defendant is once again ordered to appear for a further hearing. If the Defendant receives sufficient notice of this hearing and does not attend, the Court, at the winning party's request, may issue a *Body Attachment* to have the debtor arrested. When the Sheriff has arrested the Defendant, he or she will have the opportunity to pay the claim in full. The amount still owing on your case, plus interest if granted, is the bail that needs to be posted for the Defendant to be released from incarceration. If the Defendant is unable to pay or refuses to do so, he or she will be held in jail until another date for a hearing can be scheduled.

If the debtor cannot be found to be served with the [\*Order to Appear\*](#), the winning party can request that the hearing be continued to allow more time to find the debtor and to serve him or her with notice of the hearing.

Garnishment – The law limits the amount of garnishments and regulates the kinds of income that can be garnished. Since only one garnishment can be applied at one time, it is important to “get in line.” [Garnishment](#) orders are honored in the order in which they are received by an employer. If the debtor changes jobs, you must ask for a new garnishment order.

Execution Against Personal Property – The personal property of the debtor can be attached and sold at execution. This means of collection is strictly controlled by statute and subject to many exemptions. For that reason, it is advisable that you consult with an attorney if you think execution against personal property might be worthwhile.

If the Debtor Dies – To collect the judgment if the debtor dies before the judgment is paid, you must file a claim against the deceased's estate.

If the Debtor Files Bankruptcy – If shown to the Court that a debtor has filed bankruptcy and your judgment is listed in the bankruptcy petition, the Court is required by Federal law to stop collection proceedings. In that case, your only remedy is in Bankruptcy Court.

## **Release of Judgment**

When you have received payment in full of your judgment, you are required to file a [\*Release of Judgment\*](#). This form states that you are fully satisfied with payment you have received and you wish to close this case and take no further action against the defendant. This should be filed within thirty (30) days of payment in full.

## **Forms Used in Small Claim Actions**

Throughout this manual, different forms needed during the course of your suit have been mentioned. Each form is easy to complete and its intended use has been explained previously in this manual. However, if there is a form attached that is unfamiliar, please ask.

It is your responsibility to know which form and how many to file. Below you will find some examples of how many of each form you must bring to the Clerk's office when filing.

For any pleading that must be signed by the Judge, you need the original plus 1 to stay in the file. You will also need 1 copy for each party. Therefore, if your case has 1 defendant and you wish service to be achieved by first class or certified mail, you would need to bring the original plus 3 copies. For each additional defendant you would need 1 more copy.

For cases where the plaintiff chooses, and the Court allows, service by Sheriff, you should provide the original plus 1 for each party, plus 1 additional copy for each defendant the Sheriff is to serve.

Example:     Plaintiff vs. John Doe and Jane Doe

You, the plaintiff, are filing an Order to Appear that will be served by first class mail. You would submit the original plus 3 copies. If the Court allows you to choose service by sheriff, you would bring the original plus 6.

People generally do not choose to file legal actions; they are usually forced by circumstance. However, sometimes it's impossible to settle a dispute and this step becomes necessary. If that is where you now find yourself, we hope you find this to be a valuable resource. We further hope that this manual makes the process a bit more familiar to you and that it answers many of the questions that you may have along the way.

## **PREPARING FOR COURT CHECKLIST**

[Self-Service Legal Center \(/courts/selfservice\)](/courts/selfservice)

[Representing Yourself in Court \(/courts/selfservice/unrepresented\)](/courts/selfservice/unrepresented)

In Indiana, the Courts are open to each and every person. Although there is no requirement that a person have a lawyer to go to Court, you are encouraged to talk with lawyer to make sure you know your rights and all your legal options. Courts have a lot of rules and procedures that have to be followed. If you do not follow the rules, you may not be able to give the judge all of the information you want to about your case. If you represent yourself, you must be prepared. When preparing for your Court hearing, keep in mind the following things.

### **BEFORE YOUR COURT DATE**

1. Read over all of your court documents. Be familiar with all the documents that you and the other side have submitted to the Court.
2. All parties in a court action must be given proper notice of all pending matters and hearings. Make sure you deliver a copy of each document or piece of information that is filed or delivered to the court to the other party. It is your responsibility to do this in most instances, not the court's. Failure to provide notice of a hearing or to give the documents to the other party could delay your case.
3. Review and research the statutes, rules or procedure, and case law that apply to your type of case. You need to be prepared "legally" for court. The Court will require you to follow the same rules and procedures that an attorney must follow.
4. Often it is helpful to observe another case similar to yours in the same court at some point before your hearing date so that you can see how the court conducts its proceedings.
5. Gather all the papers you want the judge to see. Make several copies to take to Court. The court may not be able to consider all of your information if it is not properly presented to the court as required by court rules. For information on how to properly admit documents and testimony into evidence at trial, see the [Indiana Rules of Evidence \(http://www.in.gov/judiciary/rules/evidence/\)](http://www.in.gov/judiciary/rules/evidence/) and the [Indiana Rules of Trial Procedure \(http://www.in.gov/judiciary/rules/trial proc/\)](http://www.in.gov/judiciary/rules/trial%20proc/).
6. Decide who you want to testify in Court on your behalf. Remember, in Court, you cannot tell the judge what someone else said, so if you need that statement introduced in Court, the person who made the statement needs to testify.
7. Write out your questions in advance. Go over your questions with your witnesses ahead of time. This will prepare both you and them for the actual hearing.

8. Create an outline or a brief summary of your side of the case. It may be helpful to prepare a brief list of your main points so you will be sure you state all that is necessary.

### **ON THE DAY OF YOUR COURT DATE**

1. Be on time. Better yet, arrive early for your court hearing. However, be prepared to wait in case earlier cases take longer than expected. Give yourself plenty of extra time to get to the Courthouse. Most courts have metal detectors at their entrances, so it may take extra time to enter the Courtroom. Any bags or packages that are brought to court are subject to inspection. Weapons are not permitted. When you come to court, bring copies of any papers you want the Judge to see. The court will keep any item or papers offered in evidence.

2. Dress appropriately. It is important for you to dress in a manner that shows respect for the Court and for the legal proceeding that is taking place. Plan to dress as though you were going to an important job interview or attending a special occasion.

3. Be respectful to everyone. Call the Judge “Your Honor.” Always stand when the Judge or other judicial officer enters or leaves the bench. Address all comments to the Judge, except when you are questioning a witness.

4. Listen carefully and wait your turn to speak or respond. Do not interrupt others when they are talking. Everyone will get a chance to tell their side of the story. Be polite even if you do not agree. If you have an objection to testimony or documents presented to the court, your objections have to be made according to court rules and procedures.

5. An official record will be kept of the courtroom proceedings. All of your comments will be recorded. Be sure to speak clearly, slowly, and at a volume that can be heard and understood.

6. If other people are coming with you to court, only bring people who are needed for your case as a witness and maybe a few people to support you. Remember that the appearance and behavior of anyone who joins you in the courtroom will reflect directly on you and your case. Therefore, your friends and family members should dress and act appropriately to show respect for the Court and the important proceedings of which you are a part.

7. Do not bring children with you to court, unless you are specifically asked to do so by the Judge, an attorney or the Guardian ad Litem (GAL) or Court Appointed Special Advocate (CASA), or unless the child is a witness in the case or will provide information to the judge at the hearing.

8. Turn off cellular phones and pagers while in the courtroom, court offices or when attending conferences called by the court.

9. Be prepared to offer a brief summary of your side of the case. You need to tell the judge exactly what you want.

10. When asking your witnesses questions, it is helpful to start by asking them their name and address. If their job is important to your case, you may want to ask them what their occupation is, what their educational degrees are, and how long they have been doing their job. Then you can ask the specific questions that will bring out the information they have about your case.

11. You have the right to ask the other side and their witnesses questions during the hearing. You also have the right to object to testimony or documents/information presented to the court by the other side. However, you have to state the reason for any objection under the appropriate court rules or Rules of Evidence.

If you need any special arrangements with regard to disabilities or special needs, such as an interpreter, call ahead to the clerk's office or court office. By making arrangements ahead of time for any speech and hearing disabilities, vision problems, handicap accessibility, or language barriers, you can help to ensure that you will receive the best service possible from the Courts.

We truly want your experience with the Indiana Judicial System to be a pleasant one. The better informed and prepared you are, the more likely it is that you will have a positive experience and achieve the results you are hoping for in your case.

---

Getting help with your case

**COURT STAFF CANNOT GIVE LEGAL ADVICE.**

If you have questions about handling a legal matter, please contact a lawyer. See [Getting Legal Help](#) for some resources.

[Contact your local clerk's office](#) about where to file your forms, or [learn about how to e-file](#).