

# **DEFENDANT'S MANUAL FOR SMALL CLAIMS COURT**

**LaPorte Superior, Court No. 3  
LaPorte, Indiana**

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## ABOUT THE SMALL CLAIMS COURT

In LaPorte County small claims are handled by two county courts:

LaPorte Superior Court 3, LaPorte, Government Complex, LaPorte, Indiana, and LaPorte Superior Court 4, Michigan City, corner of Michigan Boulevard and Washington, Michigan City, Indiana.

The small claims court allows every citizen to bring a lawsuit in an informal trial and does not require that the parties be represented by an attorney. It is not required that you hire an attorney to represent you, unless you are a sole proprietorship, partnership, corporation, limited liability corporation or corporate entity and the claim is over \$1500.00. However any party may choose to hire an attorney if you wish to do so.

The procedures are not complicated. The plaintiff needs to complete a simple form stating why he believes the defendant owes him money or has possession of property to which the plaintiff is entitled. Each party will then explain their side of the story to a judge at trial. The judge may then ask questions of each party to determine the complete facts of the situation. The judge will make a decision based on the facts and evidence presented by the parties and on the law as it applies to the particular facts.

## DEFINITIONS

Continuance - postponement of an action pending in court

Default Judgment - decision by the court when the defendant fails to appear at trial

Defendant - the person being sued

Docket - court records

Judgment - the written decision of the court

Jurisdiction - authority giving a court the power to hear and decide cases

Notice of Claim - written statement of a claim against a defendant and an order for the defendant to appear in court

Plaintiff - the person suing

Subpoena - court order requiring a witness to appear in court and give testimony

Vacate - making a judgment or court order ineffective

## ABOUT THE LAWSUIT

You have become a defendant in a law suit in small claims court. Although it is not required that you hire an attorney to represent you, you may do so if you wish. The trial itself will be informal without technical or formal rules. It should not be difficult or complicated for you to defend yourself in the small claims court.

You probably have been notified of the claim the plaintiff has made against you by a registered letter called a Notice of Claim. The Notice of Claim should contain:

1. The name of the court.
2. The name, address and telephone number of the plaintiff and yourself.
3. The place, date, and time of the trial which should not be less than ten (10) days or more than forty (40) days from the date you received the letter.
4. A brief statement of the plaintiff's claim against you and a copy of the contract or statement of account if that is the basis of the plaintiff's claim.
5. A statement that you may appear at the trial either in person or have an attorney represent you.
6. An instruction that you are to bring to the trial all documents in your possession or control concerning the claim.
7. A statement that if you do not wish to dispute the claim you may still appear for the purpose of establishing how you will pay the claim.
8. The name, address and telephone number of the person with whom you may communicate if you are unable to appear at the specified time or place.
9. A statement that a default judgment may be entered against you if you or your representative does not appear at the trial.

In addition to the instructions in the Notice of Claim which you must follow this manual attempts to help you in the preparation of your defense to the claim filed against you and advise you of what to expect before, during and after trial.

## IMPORTANT

Any information which follows may be changed slightly by rules established by the local court. When filing your claim you should ask the clerk for a copy of the local rules of the court for small claims. These rules may also establish time periods for taking certain actions in connection with your defense. For example, the rules may establish that last date you may request subpoenas or continuances, file settlements or file counterclaims. While changes from this manual by local rules may be slight, they could be very important. Be sure to check any local rules of the court.

## BEFORE TRIAL

Gather any evidence you may have; the original contract, receipts, anything which can be taken to court to help prove your defense. Contact your witnesses and advise them of the time and place of the trial. If any of your witnesses are reluctant to appear at the trial, the court can issue a subpoena to require them to attend. If this becomes necessary, you should contact the clerk and give the correct names and addresses of the witnesses and request that the subpoenas be issued.

## JURY TRIAL

The plaintiff gives up his right to a jury trial by filing his claim in small claims court. But, in Indiana, the defendant in every trial has the right to a jury. In small claims court, you must request a jury trial within ten (10) days of receipt of the Notice of Claim. Your request for a trial must be made by affidavit, stating that there are questions of fact requiring a trial by jury and specifying what these questions are, and stating that your request is intended in good faith. Furthermore, you must pay a fee of seventy dollars (\$70.00). Lastly, in a jury trial, all formal and technical rules will apply, and it is highly advisable that you contact a lawyer.

## DISCOVERING INFORMATION

If the plaintiff has any information which you do not have access to and which is necessary for you to prepare your defense, you may request the court to order the plaintiff to disclose this information to you. Similarly, the plaintiff may make such a request to the court in order to prepare his case. Such a request will be granted only by giving good reasons for disclosing the information and only after the other party has been notified that the information is being sought. The court may limit the information sought to that which is necessary for the particular case.

## SETTLEMENTS

Before the trial date, you may decide to pay the plaintiff the amount of his claim or some other amount you both agree on. This is called a settlement of the claim. If you reach such an agreement, you should put it in writing which both you and the plaintiff must sign. The settlement agreement should then be given to the clerk and, after approval by the court, will have the same effect as a judgment. It is a binding agreement and you may use it, if necessary, to prove you have already settled the claim, or the plaintiff may use it to prove you owe him the money you agreed to pay. It cannot be enforced unless it is in writing, signed by the parties, filed with and approved by the court. Unless you specify otherwise in the agreement, it will be assumed that the plaintiff has recovered his filing fee and any other costs. Always get a receipt for any payment made to the plaintiff.

## COUNTERCLAIMS

After you receive the Notice of Claim, if you believe that the plaintiff owes you money because of something that happened in the same transaction or occurrence, you may file a claim against the plaintiff called a counterclaim. If the counterclaim exceeds six thousand dollars (\$6,000.00), you give up your right to the excess over the amount by filing your counterclaim in the Small Claims Division. Both your counterclaim and the plaintiff's claim will ordinarily be decided at the same trial. However, if you wish to file a claim larger than six thousand dollars (\$6,000.00) you must file a separate claim, and all the formal and technical rules will apply, and, for this reason, it would be advisable that you contact a lawyer.

If you wish to file a counterclaim, you should pick up and read a copy of the **Plaintiff's Manual for Small Claims Court**. To file a counterclaim you will need to follow the same rules and procedures for filing a claim as outlined in that manual, except that you must file the counterclaim in time to permit the plaintiff to be notified of the counterclaim at least seven (7) days before trial. It is not required that you hire an attorney if the counter claim is tried in small claims court, unless you are a sole proprietorship, partnership, corporation, limited liability corporation or corporate entity and the claim is over \$1500.00. However, any party may choose to hire an attorney if you wish to do so and it is highly advisable that you contact an attorney if the counterclaim is to be tried in a court other than small claims court.

## CHANGE OF JUDGE

If you have reason to believe that the judge is prejudiced against you or should disqualify herself from presiding over the trial because of some conflict of interest, you may request a change of judge before trial. Such a request will be granted without your being required to state your reasons for the request if made within ten (10) days of the receipt of the Notice of Claim. If you believe the second judge is prejudiced, you must show a very good reason for a change of judge before another judge can be selected. After the trial begins, your only remedy for a judge who you feel is prejudiced is by appeal to a higher court after the trial is over and judgment has been made. It should be very seldom that you find a judge who is biased or prejudiced, so that this procedure will be unnecessary in nearly all cases.

## CONTINUANCES AND FAILURE TO APPEAR

If you are unable to attend the trial for any good reason, you may request a continuance before the trial date. You are entitled to only one continuance; use it wisely. The court may grant additional continuances but only for unusual circumstances. If the plaintiff does not appear at trial without having been granted a continuance, his claim will be dismissed, although he may file his claim again. The plaintiff may refile only once, and if he misses the second trial, his claim will be dismissed, and he cannot file again in small claims court.

If you miss the trial without first being granted a continuance by the court, the court may enter a default judgment against you. The plaintiff will then be able to recover the amount of his claim plus his filing fee from you. In order to enter such a judgment the judge must determine that:

- 1) you have been notified of the claim against you and,
- 2) you are not under a legal disability or actively engaged in military service and,
- 3) what the plaintiff has stated in the Notice of Claim would entitle him to win if it were proved at trial.

However, if you can show within one year after the judgment that you did not actually have notice or were under a legal disability, or actively engaged in military service the court may vacate the judgment and reschedule a trial for the original claim. After one year you can seek to have the default judgment reversed only by filing your own lawsuit for the particular purpose.

## THE TRIAL

If both you and the plaintiff appear at trial, each of you will simply explain your side of the story to the judge, presenting any witnesses and evidence you may have to support your case. There are no formal or technical rules you must follow. The judge may ask each of you questions to help her clarify what actually happened. Remember that although the trial is informal, all parties are subject to penalties for contempt of court and perjury for testimony given under oath.

After the judge has heard from each side, he will make a decision based on the facts presented by you and the plaintiff and on the law as it applies to those facts. The judge may notify you of the decision immediately after the trial or may wait to make the decision in order to consider the problem more fully. In any event, the court will notify both you and the plaintiff of the result.

## AFTER THE TRIAL

After the court makes its decision, it will enter judgment stating who must pay and the method for payment, either in a lump sum or installments. If you lose you will be required to pay the amount of the plaintiff's claim and court costs. Courts costs include the plaintiff's filing fee of \$60, witness fees at \$5 per day, plus the mileage rate from the witnesses' home to the trial and return, presently 36 ¢ per mile, and the sheriff's fee of \$15 only if it is necessary for the sheriff to deliver a subpoena or notify you of the claim in person, if the registered letter is returned undelivered. If you win the lawsuit, the plaintiff loses his filing fee and must pay all witnesses and sheriff's fees.

If you are successful and win on a counterclaim, the plaintiff will be obligated to pay the amount of the counterclaim. If the plaintiff has also won his claim, you must pay or be paid the difference of the amounts of the two claims depending on which claim is larger.

If the judgment is not paid when due, or any installment is not paid when due, the plaintiff must first contact you and request payment. After contacting you, if the plaintiff still does not receive payment, he must ask the clerk to contact you to request payment of the judgment and advise you of what action can be taken against you if you do not pay. The court may order you to pay the plaintiff any reasonable collection costs in addition to the amount of the judgment.

If you have not paid the judgment after the plaintiff has taken these steps, he may ask the court for further assistance. Briefly, what can then happen is that the court may garnish your wages or order that your personal property or real estate be sold to pay the judgment.

If you are not satisfied with the decision of the small claims court, you may appeal to the Indiana Court of Appeals. An appeal will require that you hire an attorney. In order to appeal, the attorney must take action within thirty (30) days of the judgment. If these actions are not taken within the specified time, you cannot appeal the decision. For this reason you should contact an attorney concerning an appeal no later than seven (7) days after the date of the judgment to allow the attorney sufficient time to comply with the thirty (30) day requirement.