

# **PLAINTIFF'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 courts:

LaPorte Superior Court No. 4, corner of Michigan Boulevard and Washington, Michigan City, Indiana and LaPorte Superior Court No. 3, Government Complex, Courthouse Square, LaPorte Indiana.

The Small Claims Court allows every citizen to bring a lawsuit in an informal manner and does not require that the parties be represented by an attorney. Although it is not required that you hire an attorney to represent you in Small Claims Court, you may do so if you wish.

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 his 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.

The small claims courts were created so that every citizen of Indiana might have a relatively speedy, inexpensive, uncomplicated determination of his claim. It is for your benefit. It is for your right. Don't be afraid to use it.

## DEFINITIONS

Continuance - postponement of an action pending in court

Default Judgment - decision for the plaintiff when the defendant fails to appear in court

Defendant - the person being sued

Docket - court records

Judgment - the decision of the Court

Jurisdiction - authority to a court 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 who is bringing the suit.

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

Vacate - making a judgment or court order ineffective

## WHEN CAN YOU USE THE SMALL CLAIMS COURT?

First of all, you may file your claim in any court that has jurisdiction. You may file a claim in Small Claims Court if you believe that someone owes you money or wrongfully has possession of property that belongs to you or has wrongfully damaged you or your property. For the small claims rules to apply, the amount of money or the value of the property cannot exceed \$6,000. If the amount you believe you are entitled to exceeds this maximum, you can either give up your right to recover the excess and sue in the small claims or hire an attorney to bring suit for the full amount in a court requiring formal rules at trial.

There are many instances when you may sue in the Small Claims Court. The following list does not include all of them but gives only some of the more common examples:

- 1) You may sue for money paid for defective goods.
- 2) You may sue for the amount paid for goods which you have not received, or which are not the goods that were ordered.
- 3) Between a landlord and tenant:
  - (A) You may sue for the possession of property which a landlord wrongfully keeps until back rent is paid.
  - (B) You may sue for the amount of deposit which a landlord wrongfully refuses to return.
  - (C) A landlord may bring suit to evict his tenant for not paying rent or to recover the amount of the rent due or for violations of the lease agreement.
- 4) You may sue for damage to personal property or real estate.
- 5) you may sue for personal injury.

Before you bring your lawsuit, you must be sure that the suit is filed within the time period provided by the statutes of limitation. You cannot bring suit if the time limit has run. 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. Here are the most common statutes of limitations:

- 1) **2 years**
  - A. Personal injury
  - B. Damage to personal property
- 2) **4 years** - contract for the sale of goods (either oral or written)
- 3) **6 years**
  - A. Accounts
  - B. Contracts not in writing (other than an 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
- 4) **10 years** - contracts to pay money
- 5) **20 years** - contracts in writing other than for a promise to pay money or for the sale of goods.

If you have any questions about the procedure you must follow or any other matter relating to your case, ask the clerk for assistance. If you need legal advice, you must consult an attorney, as neither the judge nor the clerk can help you in that respect.

Furthermore, if the defendant you choose to sue is a governmental entity or an employee thereof or a member of the medical profession you should first seek the advice of a lawyer in order to comply with statutory requirements which prior to the filing of a law suit must be satisfied.

## 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 claim. For example, the rules may establish the last date you may request subpoenas or continuances,

file settlements, or withdraw your claim. 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.

## **BEGINNING THE SUIT**

To begin your lawsuit you must fill out a Notice of Claim with the County Clerk's office in the county in Indiana where any one of the following conditions occur:

- 1) Where the transaction or occurrence actually took place or,
- 2) Where an obligation under contract was incurred, usually where the contract was signed or,
- 3) Where the contractual obligation is to be performed or,
- 4) Where any defendant lives or has his place of employment at the time the suit is filed.

If the claim is not filed in the proper county, the trial may be moved to the proper county and will cause you delay and extra fees.

The clerk's office will have the necessary forms for you to complete. In LaPorte County, a claim may be filed between the hours of 8:00 a.m. and 3:45 p.m. The filing fee is \$96.00 plus \$10.00 per defendant and \$1.00 copy fee and \$25.00 Sheriff fee. You will need to provide the following information on the Notice of Claim:

- 1) Your name, address and telephone number.
- 2) The exact name, address, and telephone number of the defendant and any other information which will help the Court locate the defendant. Be sure the person you are suing is the person responsible for your damages.
- 3) If your claim arises out of a written contract or statement of account, you must provide the clerk with one copy of the contract or statement of account for the Court files and one copy for each defendant. Keep the original for yourself. If you do not have a copy of the contract in your possession, it will not prevent you from filing your claim.
- 4) Be prepared to give a brief statement of why you are suing the defendant. The statement should be plainly worded and state clearly how the defendant has injured you, and why you believe he owes you the amount of money you have claimed or any other relief you are seeking.

If you have any questions about how to complete the form, ask the clerk to help you. After the Notice of Claim is completed, the clerk will give you one copy, keep one copy for the Court's files, and will send one copy to each defendant by certified mail.

The Notice of Claim should state the time, date, and place for trial. The trial will be held no sooner than ten (10) days after the defendant receives the Notice of Claim. You may withdraw your claim prior to the trial, but the filing fee cannot be returned. Sole proprietorships, partnerships, corporations, limited liability corporations and all other corporations entities filing claims over \$1500.00 must have legal counsel or your recovery will be limited to \$1,500.

## **AFTER FILING**

If you have not already done so, gather any evidence you may have; the original contract, damaged goods if they can be easily carried, repair bills, doctor bills, receipts, anything which can be taken to court to help prove your claim. 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 him the correct names and addresses of the witnesses and request that the subpoenas be issued at least 14 days before your trial date.

## **JURY TRIAL**

A 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, the defendant must request a jury trial within ten (10) days of the defendant's receipt of the Notice of Claim. A request for a jury trial in small claims court will be granted upon the approval of the request by the court and payment of A fee (\$70.00) to the clerk by the defendant. The claim will then lose its status as a small claim, and technical rules will apply. It will then be highly advisable for both you and the defendant to hire attorneys.

## **DISCOVERING INFORMATION**

If the defendant has any information to which you do not have access and which is necessary for you to pursue your claim, you may request the Court order the defendant to disclose this information to you. Similarly, the defendant may make such a request to the Court in order to prepare his defense. Such a request will be granted only by giving good reasons 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 as it deems necessary for the particular case.

## **SETTLEMENTS**

Before the trial date, the defendant may contact you and agree to pay what he owes you or some other amount you both agree upon. This is called a settlement of the claim. If you reach such an agreement, you should put it in writing, and both you and the defendant must sign the agreement. The settlement agreement should then be given to the Clerk and, after approval by the Court, it will be entered on the judgment book. The agreement will then have the same effect as a decision of the Court, and you may use it, if necessary, to force the defendant to live up to his part of the agreement. You cannot enforce the agreement unless it is in writing, signed by both parties and filed with and approved by the Court. Unless you specify otherwise in the agreement, it will be assumed that you have also recovered your filing fee and any other court costs.

## **COUNTERCLAIMS**

After the defendant receives notice of your claim, if he believes you owe him money because of something that happened in the same transaction or occurrence, he may file a claim against you. This is called a counterclaim. You will be notified of the counterclaim at least seven (7) days before the trial by a Notice of Claim sent by certified mail. If the defendant files a counterclaim, and you do not receive notice of the counterclaim at least seven (7) days before that, you may request a continuance. Both your claim and the defendant's counterclaim ordinarily will be decided at the same trial. A counterclaim could result in your being required to pay the defendant for the claim he has made against you.

If a counterclaim is filed against you, it is the same as if the person you are suing had filed a claim against you first. It is another lawsuit in which you become the defendant. If the amount of the other person's claim is less than six thousand dollars (\$6,000.00) both lawsuits will be decided at the same trial in Small Claims Court, and you will both be a plaintiff (for your claim) and a defendant (for the

other person's claim). If the amount of the counterclaim is more than six thousand dollars (\$6,000.00), each lawsuit will be tried in a separate court, yours in the Small Claims Court and the counterclaim in a court requiring formal and technical rules of trial.

If you have a counterclaim filed against you, you should obtain and read a copy of the **Defendant's Manual for Small Claims Court**. This publication can also be found in the clerk's office. Although it is not required that you hire an attorney if the counterclaim is tried in Small Claims Court, you may do so, if you wish, and it is highly advisable that you contact an attorney if the counterclaim is to be tried in a court other than the Small Claims Court.

### **CHANGE OF JUDGE**

If you have reason to believe that the judge is prejudiced against you or should disqualify himself from presiding over the trial because of some conflict of interest, you may, after filing your claim, request a change of judge without stating any reason. If you believe the second judge is prejudiced, you must show a very good reason before another change of judge can be granted. After the trial begins, your only remedy for a judge whom you feel is prejudiced is to wait until after judgment has been made then appeal the judge's decision. 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 you do not appear at the proper time and place without having been granted a continuance, your claim will be dismissed. This means that if you still want to pursue your claim, you must start over again by filing another Notice of Claim. If you miss a second trial date without notifying the Court, your claim will be dismissed, and you cannot file again for the same claim in the Small Claims Court.

If the defendant misses the trial without first being granted a continuance by the Court, the Court may enter a default judgment against the defendant. You will then be able to recover the amount of your claim plus your filing fee from the defendant. In order to enter such a judgment the judge must determine that:

- 1) The defendant has been notified of the claim against him and,
- 2) The defendant is not under a legal disability or actively engaged in military service and,
- 3) All the evidence you may have brought with you, testimony the judge may take from you and your witnesses under oath, and what you have stated in the Notice of Claim, would entitle you to win your case if no evidence contradicting your claim were introduced. However, if the defendant can show, within one year after the judgment that he did not actually have notice, was under a legal disability, was actively engaged in military service or other good reason as determined by the Court, the Court may vacate the judgment and reschedule a trial for the original claim. After one year the defendant can seek to have the default judgment reversed only by filing his own lawsuit for that particular purpose.

### **THE TRIAL**

Even if the defendant does not wish to dispute the claim, he may appear at the trial for the purpose of aiding the Court in establishing the method by which the judgment shall be paid, either in a single payment or installments.

If both you and the defendant appear at the trial, both 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 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 false 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 defendant and on the law as it applies to those facts. The judge may notify you of the Court's 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 parties of the result.

### **AFTER TRIAL**

After the Court makes its decision, the Court will enter a judgment stating who won, who must pay, and the method for payment, either in lump sum or installments. If you win, you will recover the amount of your claim and court costs. Court costs include your filing fee. If you lose the lawsuit you lose your filing fee and must pay all witness's and sheriff's fees.

If the defendant is successful and wins on a counterclaim, you will be obligated to pay the amount of the counterclaim. If you have also won your 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; you must first contact the defendant and request payment. After contacting the defendant, if you still do not receive payment, you must ask the clerk to explain methods of collection. If payment still cannot be arranged you should seek the advice of an attorney. If you are required to pay fees to the Court in pursuing collection, the Court may order all or a portion of the collection fees be refunded to you. The Court may also order the defendant to pay any reasonable collection costs, including the one time \$25 post judgment Sheriff's fee.

Proceedings for collecting the judgment after the informal method has failed can become rather complicated. Briefly, however, what can happen is that the Court may garnish the defendant's wages or order that his personal property be sold to pay the judgment. The defendant's real estate could also be sold, but this requires that the Small Claims Court judgment be filed with the Circuit Court and an attorney should be contacted. These steps could also be taken against you if you fail to pay a judgment on a counterclaim.

After you have received full payment of the judgment from the defendant, you must file a statement of collection with the clerk. You cannot file another claim in the Small Claims Court until such a statement is filed. Ask the clerk what you must do to complete this form.

When a judgment is paid, the person receiving the money must file a statement with the clerk containing the number assigned to the claim by the Court, and a statement that the person who is to pay has done so. The statement must be signed by the person receiving payment. The signature of the person receiving payment must be notarized and can usually be done by the clerk. This is necessary to protect the person paying the judgment by making a public record of the fact that the debt has been paid.

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.