

**WARREN TOWNSHIP  
of MARION COUNTY**

**WARREN  
TOWNSHIP  
SMALL CLAIMS  
COURT**



**GARLAND E. GRAVES, JUDGE**

**Warren Township  
Small Claims Court  
Garland E. Graves,  
Judge**

501 N. Post Road, Suite C  
Indianapolis, IN 46219  
(317) 327-8919

The Warren Township Small Claims Court is empowered by the authority of the State Legislature under Article 33 of the Indiana Code [I.C. 33-34-3].

The Small Claims Courts were created so that you would have a speedy, uncomplicated, and reasonably inexpensive means to resolve disputes. 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 want; however, in most instances you will have to pay your legal fees even if you win unless there is a written agreement making the other party liable for your attorney's fees.

If appropriately used, the Small Claims Court can save time and costs. Do not be intimidated to use it.

**The court's staff and the clerk's staff will assist you, but they cannot give you legal advice.**

The jurisdiction of the court is limited to those cases where the claim for damages does not exceed \$10,000. Except for cases between a landlord and tenant, a case may be filed in any township small claims court within the county. Cases involving landlord and tenant disputes must be filed in the township where the property is located.

**In order to file you must provide the following:**

- Your name, address, zip code, telephone number and email address
- The defendant's (s) names, address, zip code, telephone number and email address
- If you choose to have the defendant served at their place of employment, they must be served **personally**, or you will **not** obtain judgment if the defendant fails to appear

When PLAINTIFF IS A CORPORATION the following applies:

- You may file up to \$1,500.00 without an attorney
- Your attorney can file for amounts over \$1,500.00

You must also pay a filing fee. This fee includes the fee for the constable to serve the person or entity you are suing. When filing by mail, please include a self-addressed, stamped envelope so that we can return your Filed stamped copies. **NO PERSONAL CHECKS ARE ACCEPTED.**

**Before You File Your Claim**

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

- (a) Does the Small Claims Court have the power (jurisdiction) to hear your case?  
Yes No
- (b) Is this county the proper place (venue) for filing your claim?  
Yes No
- (c) Who are the parties to the action?

(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 Question (d) is "no" may you file a small claims action in this county.

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

The following list contains the most common types of claims filed in the Small Claims Court:

- (a) Personal injury;  
(b) Damage to personal or real property;  
(c) Return of wrongfully taken property and return of money paid for faulty work; Replevin Claims  
(d) Money owed (bad checks, wages, services rendered, accounts receivable);  
(e) Landlord and tenant disputes;  
(f) Emergency possessory actions between a landlord and tenant under Ind. Code 32-31-6.

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

Small Claims Rule 12 Venue

Proper Venue. Proper venue for a claim between landlord and tenant for rent **or** possession of real estate filed in county small claims courts created pursuant to IC 33-11.6 1-3 **shall** be in the county and township division of the Small Claims Court where the real estate is located. In the event there is no court division existing in the township where the real estate is located, such claim may be filed in any of the townships of the county.

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

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

### **Preparing for Trial**

You may ask the judge to order the other person to give you certain information which he/she has and which you need, either to support your claim or defend against the claim. This is called *discovery*.

If before the trial the two parties can agree on what is owed, this settlement should be put in writing and signed by both parties. The settlement should be given to the clerk for the judge to approve. It will then be recorded in the judgment docket as if it were a decision by the judge. This is important because if you do this and then the other party does not pay you as agreed, you can request the court to make him/her keep his/her part of the bargain.

### **The Trial**

If the person suing fails to come to court on time for his trial date the court may dismiss the claim. After the first dismissal, he/she may file his/her claim again, for another fee, and if it is dismissed a second time the court may say that he/she cannot refile his claim in any of the small claims courts.

If the person sued doesn't come to court, the judge must find that he/she

probably did receive notice of the claim, that he/she could understand the claim, and that you have a good claim against him/her. To show this, you must tell your story and offer proof. Then the judge will find against the person sued even if he/she isn't in court (default judgment). This person can come back to court and ask for a new hearing within a year. However, he/she must have a good reason for asking the court to do this. One good reason is the fact that he/she never received notice of the claim.

On the day set for your trial, be in court at the start of the session in which your case is being heard. Have the papers and witnesses you need to prove your case with you.

When your case is called, the judge will swear both parties in. Then the judge will ask you to tell your side of the story and may ask questions so that he/she fully understands your claim. At this time, you may also call any other witnesses or show the judge any papers you might have.

Then the judge will ask the person sued to tell his/her side, and present evidence. If you are the person suing, it is up to you to see that all the facts are presented fully and correctly.

When the judge has heard parties, he/she will make a decision based on those facts, will enter a judgment stating the amount of judgment. If the person who sued wins, he/she will be awarded the amount of the claim plus the court costs and statutory interest from the date the judgment is issued.

### **Default Judgment**

If at the date of 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 keep him or her from attending the trial or that would prevent the Defendant from understanding the nature of the proceedings.
- 3) That the Plaintiff has a valid claim and should recover from the Defendant.

The Plaintiff may complete these requirements by signing affidavits, or in some cases 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 with the court within one (1) year of the date the judgment was entered. If the request is properly filed, the judge will hold a hearing where the parties may appear. The party requesting the overturning of the default judgment must show "good cause" for vacating the default judgment. If the judge does vacate the judgment, the court will hold a new trial on the original claim of the parties.

If the one (1) year period has passed, the party seeking to set aside the 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 action would best be accomplished with the help of a lawyer.

### **Appeal**

If one or both parties are not satisfied with the court's decision and judgment, an appeal of the decision may be taken to the Indiana Court of Appeals. To file an appeal, the party appealing must file a Notice of Appeal and pay a filing fee within sixty (60) days from the date the Small Claims Court issued judgment. Due to the Rules of Trial Procedure for presenting an appeal before the Court of Appeals, the party seeking the appeal should consult legal counsel as soon as possible after the Small Claims Court judgment has been entered.

### **Collecting the Judgment**

If you receive a favorable judgment, it will be recorded (i.e., entered and indexed) in the judgment docket of this county. At the time your judgment is recorded 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 and delivering it, along with the necessary fee, to the Clerk of the county in question for registering in that Clerk's judgment docket. Once the judgment is recorded, the judgment lien exists for a period of ten (10) years. At the end of the ten-year period from its entry, the lien against real property 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 Section 34-11-2-11 prior to the expiration of the lien.

Collecting the judgment is your responsibility. The length of time it will take to collect will depend upon both your diligence and the debtor's

ability to pay. When the judgment is entered, payment may be ordered in full or by installments. In addition, the court may order that the payments be made to the clerk's office. If payments are made to the clerk's office, neither that office nor the court will monitor payments, but you may call the clerk's office to ask about payments. If payment is not made, you have several legal methods of collection.

Filing a Proceedings Supplemental is the first 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 which can be garnished.

At the hearing, you will have the opportunity to ask the debtor, or inform the court, about the debtor's ability to pay. At the conclusion of the hearing, the judge may order any of the following:

- the Defendant to pay the judgment in full or in installments (the installments may be modified at any time in the future);
- the Defendant to supply the court with current information regarding employment status and address;
- the Defendant to reappear sometime in the future to provide additional information;
- a garnishment of the debtor's earnings;

- execution against the debtor's personal property.