

THIS IS A SUMMARY OF SMALL CLAIMS COURT AND YOU SHOULD NOT REGARD IT AS CONTAINING ALL THE ANSWERS TO ALL YOUR QUESTIONS. IF YOU NEED MORE INFORMATION ASK AN ATTORNEY OR GO TO THE ST. JOSEPH COUNTY LAW LIBRARY IN THE BASEMENT OF THE COURTHOUSE TO DO RESEARCH.

WHAT TYPE OF CASES GO TO SMALL CLAIMS COURT?

Civil cases where the amount claimed is \$10,000 or less.

DO I NEED AN ATTORNEY?

No, you may act on your own behalf, unless you are a corporation and the amount claimed is over \$6,000.00. A parent or guardian can act on behalf of a minor child.

IT IS IMPORTANT TO KNOW THAT NEITHER THE CLERKS NOR THE JUDGE MAY ACT AS YOUR ATTORNEY. NEITHER CAN GIVE YOU LEGAL ADVICE!!!

IS THERE A FEE TO FILE A CASE?

Yes, the filing fee is \$97.00, plus \$10.00 for every Defendant(s) after.

CASH, MONEY ORDER OR CASHIER'S CHECKS ONLY. NO PERSONAL CHECKS.

IF THE DEFENDANT LIVES IN ST. JOSEPH COUNTY, THERE IS A \$28.00 PRE-JUDGEMENT SERVICE FEE OF SUMMONS BY THE SHERIFF. ALSO, THERE IS A \$28.00 ONE TIME POST JUDGMENT SERVICE FEE. PAYMENTS FOR THESE FEES SHOULD BE MADE PAYBLE DIRECTLY TO THE ST. JOSEPH COUNTY CLERK.

BEFORE YOU FILE A "NOTICE OF CLAIM" YOU MUST BE ABLE TO ANSWER THESE QUESTIONS:

1) Am I in the right county? A Claim should be filed in the county where the event(s) which caused the claim occurred; or where the contract that is the basis of the claim was made or is to be performed; or where the defendant(s) lives or works.

2) Is my claim too old? Time limits are set by law. If you wait too long the Court can not hear your claim. Generally, the time starts from the date that the event(s) occurred. Some common time limits are: a) Two (2) years for personal injury, property damage and unwritten employment contracts; b) Four (4) years for contracts for the sale of goods; c) Six (6) years for rental disputes, recovery of property and unwritten contracts.

3) Do I have all the correct information that I need? When filling out the "Notice of Claim" you **must** put your correct name, address and telephone number as PLAINTIFF. You **must** have the correct name, address and telephone number of the DEFENDANT(S). For claims "on account" you **must** attach a copy of an itemized statement. For claims based on a written contract attach a copy of the contract.

4) What else do I put on the "Notice of Claim"? In a simple and clear manner tell the Court why you are making the claim in the "BASIS OF CLAIM" section. In the "RELIEF REQUESTED" section tell the Court exactly what you want from the Defendant.

DEFENDANTS DO HAVE THE RIGHT TO FILE A COUNTERCLAIM.

WHAT HAPPENS AT THE TRIAL?

You will present your evidence, which you must obtain, and your witnesses. If you feel that a witness will not appear, you may ask the clerks to issue a subpoena for that witness to appear and for any papers or things in the witness' possession or control that may help you prove your case. You must give the Judge who will decide the case all the information you can, as clearly as you can. This is the only way the Judge can learn about your claim and make a decision. After you have presented your evidence it is the Defendant's turn to present evidence and witnesses.

If you fail to appear for the trial the Judge may dismiss the case.

If the defendant(s) fails to appear and there is proof that notice was received a "default judgment" may be entered.

HOW DOES THE JUDGE DECIDE THE CASE?

You must prove three (3) things: 1) That your proof is more convincing than the defendant's (a preponderance of the evidence is in your favor) ; 2) that the defendant(s) is actually liable for the damages or losses that you claim; and 3) the amount of the damages or your right to the property claimed. If you fail to show the Judge any one of these, you will lose.

WHAT ELSE DO I NEED TO KNOW?

If the Judge decides in your favor a judgment for damages may be entered. This is a "lien" (a charge or claim) on the property of the defendant(s) in this county, now and in the future. **A judgment is valid for ten (10) years and can be renewed.** Or, the Judge may order that your property be returned to you if that is what you claimed.

WHAT IF THE DEFENDANT DOES NOT DO WHAT THE JUDGE ORDERED?

You may then go back to Court on a "PROCEEDING SUPPLEMENTARY" at which the Judge may order a garnishment of the defendant's wages (the Court will need to know where the defendant is employed).

WHAT IF I DO NOT AGREE WITH THE JUDGE'S DECISION?

You may file and appeal with the Indiana Court of Appeals. This process is subject to strict and short time limits, and to complicated rules of procedure. You should speak to an attorney before acting.

RELIEF FROM JUDGMENT

If a default judgment has been entered against you, a written request can be filed with the Court, within one (1) year to have it set aside. You must have good grounds for this request and if properly filed, a hearing will be set for you to show why the judgment should be set aside. A new trial will be set if you succeed. **After one (1) year you must file to reverse the judgment under Indiana Trial Rule 60(b).**

*I HOPE THAT YOU WILL FIND THIS
INFORMATION HELPFUL.
REMEMBER SMALL CLAIMS COURT
IS YOUR COURT.*

*SINCERELY,
RITA L. GLENN, CLERK
ST. JOSEPH CIRCUIT COURT*

ST. JOSEPH SUPERIOR COURT SMALL CLAIMS DIVISION

**SOUTH BEND DIVISION
1855 COURTHOUSE
1ST FLOOR
112 S. LAFAYETTE BLVD
SOUTH BEND, IN 46601
574-235-9794**

**MISHAWAKA DIVISION
SECOND FLOOR
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PREPARED BY THE OFFICE OF

**RITA L. GLENN, CLERK
ST. JOSEPH CIRCUIT COURT**