Boone County Superior Court II Small Claims Court Manual

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Revised and Supplemented as of July 2014, by the Honorable Rebecca J. McClure, Judge of Boone County Superior Court II, and Mark X. Sullivan, Small Claims Court Commissioner

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1. Purpose of the Small Claims Manual

This manual was prepared to furnish general knowledge concerning the operation of the Small Claims Court in Boone County, Indiana (hereinafter "Court"). The manual does not cover all applicable areas of law and procedure. However, it does address many of the routine problems encountered and difficulties experienced with cases filed in Court. Inquiries regarding a particular procedure, practice or Court policy may be directed to the Boone County Clerk (hereinafter "Clerk") or the Court's staff. However, be advised that neither the Clerk nor the Court's staff are permitted to provide legal advice.

2. Introduction

The small claims court system was created to provide a speedy, relatively inexpensive and uncomplicated means of litigating disputes by means of a lawsuit. A small claims lawsuit is commenced by paying a fee and filling-out a simple form describing the dispute and the amount that the party filing the lawsuit seeks to recover. The lawsuit will be scheduled for trial when it is filed. At trial, each party will provide evidence to the Judge of the Court (hereinafter "Judge") concerning the dispute. The Judge may ask questions of the parties during the trial to help the Judge obtain a clearer understanding of the relevant facts of the lawsuit and the disputed issues. The Judge will then make a decision based upon the facts and evidence presented by the parties at trial and also based upon the law as it applies to the facts.

The Court has simple rules of procedure. The primary purpose of these simple rules is to make it easier for a party involved in a small claims lawsuit to participate without having to retain an attorney, which can be expensive. However, be cautioned that this simplification of procedures does not imply that the mere filing of a lawsuit will guarantee success. Rather, and as is discussed throughout this manual, the chances of success in a small claims lawsuit will be greatly enhanced by preparation. An otherwise meritorious lawsuit can be lost if all of the necessary and relevant evidence is not presented in an effective and orderly manner.

The parties involved in a small claims lawsuit should understand that if the lawsuit should go to trial, the Judge cannot provide assistance to any of the individual parties during the trial. The Judge is to remain entirely unbiased.

3. Definitions

Agreed Judgment/Pre-Trial Settlement - An agreement by the parties settling a small claims lawsuit or some portion of it, subject to the Judge's approval.

Affidavit - A written statement made upon affirmation that the statement is true under penalty of perjury or under oath before a notary public or other person authorized to administer oaths.

Affidavit of Debt - An affidavit in which the party filing the small claims lawsuit, known as the plaintiff, verifies the amount that the plaintiff seeks to recover. (The plaintiff must submit an Affidavit of Debt when filing a lawsuit that seeks to collect an account or debt allegedly owed.)

Body Attachment - An order of arrest issued by the Judge when a party does not appear when ordered to do so by the Judge.

Contempt - An act or a failure to act that tends to obstruct or interfere with the orderly operation of the Court.

Continuance - Postponement of a hearing or trial to a later date.

Counterclaim - A claim filed against a plaintiff by the party against whom the small claims lawsuit was initially filed, known as the defendant.

Damages - A sum awarded by the Court in a small claims lawsuit as compensation for an injury or injuries.

Default Judgment - A decision in favor of the plaintiff when the defendant fails to appear in Court for trial.

Defendant - The person or entity being sued and/or who files a counterclaim.

Discovery - A request for information and/or documents in the possession of an opposing party in a small claims lawsuit.

Dismissal - The termination of a small claims lawsuit prior to a trial and the elimination of same from the Court's docket.

Eviction/Ejectment - The legal process of removing a person or persons from real property.

Garnishee-Defendant - A third-party served with an order by the Court to apply property held by the third-party to satisfy a judgment in whole or in part.

Garnishment - An order by the Court requiring that property (cash or other items of value) held by a third-party be forwarded to the Clerk and applied against a judgment.

Immediate Possession - A procedure for expedited return of real or personal property to its owner.

Injury - Any damage done to another person or to that person's rights or property.

Interrogatories - Written questions directed to a party in a small claims lawsuit that must be responded to in writing.

Judgment - The decision of the Court.

Jurisdiction - The authority of the Court to hear and decide a particular small claims lawsuit.

Notice of Claim/Claim Form - A form filled-out by the plaintiff which describes the dispute that is the subject of a small claims lawsuit and which is filed to initiate same. (It serves as notice to the defendant that a lawsuit has been filed and provides the date of the scheduled trial.)

Open Account - A billing for goods and/or services rendered under an agreement between parties.

Party - A person or entity pursuing a small claims lawsuit or defending it.

Personal Property - Movable items or things.

Plaintiff - The person or entity that files a small claims lawsuit.

Post-Judgment Interest - Compensation for loss of use of money from the day the judgment is entered to the day it is fully collected.

Pre-Judgment Interest - Compensation for loss of use of money between the time that the money was owed or became due and the day that a judgment is entered.

Proceedings Supplemental - Proceedings to assist a party with the collection of a judgment entered in that party's favor. (These proceedings are commenced by filing a motion with the Court.)

Real Property - Land and items affixed thereto such as a home or other structures.

Release of Judgment - An entry in the records of the Court and/or Clerk showing that a judgment has been paid in full.

Rule to Show Cause - A written request asking the Court to hold a person or entity in contempt for failure to follow or abide by a Court order.

Statute of Limitations - A time limit for filing a small claims lawsuit.

Subpoena - A document issued in order to compel the appearance of a witness at a hearing or trial.

Third-Party - A person or entity that may have an interest or involvement in a small claims lawsuit, other than the plaintiff or defendant.

Third-Party Notice of Claim - A written document or form filed by a party to a small claims lawsuit in order to add and assert a claim against a person or entity not yet a party.

Vacate - A decision by the Judge which renders a previous judgment or Court order to be ineffective and no longer in force.

Venue - The county where the small claims lawsuit is filed or is pending.

4. What You Can and Cannot Sue for in Small Claims Court

There are many types of civil disputes that can be filed and litigated in a small claims lawsuit. The following list contains some examples:

A. Personal injury.

B. Damage to personal property or real estate.

C. Landlord and tenant disputes.

D. Money owed for goods and/or services.

E. Return of money paid for faulty work.

F. Failure to abide by a contract.

There is, however, a limitation on the amount that can be recovered in a small claim lawsuit, that being Six Thousand Dollars ($6,000.00). This limitation applies even if the damages in a particular lawsuit may actually exceed Six Thousand Dollars ($6,000.00).

5. Location or Venue for Filing a Lawsuit

Small claims rules provide that a small claims lawsuit may be filed in any of the following venues:

A. Where the transaction or occurrence involved in the lawsuit actually took place.

B. Where the obligation or debt which is the subject of the lawsuit was incurred.

C. Where the obligation which is the subject of the lawsuit is to be performed.

D. Where the defendant resides.

E. Where the defendant is employed.

If more than one county qualifies as a proper venue, the lawsuit can be filed in any one of the qualifying counties.

6. Parties to a Lawsuit

As stated above, the plaintiff is the person or entity that files the small claims lawsuit. In a case involving money owed, the plaintiff is typically the person or entity to whom the money is owed. For example, an apartment building manager cannot sue a tenant of the building to collect rent because the manager is an employee of the building's owner and is not the person to whom rent is owed. It is the building's owner (i.e., the landlord) who is owed rent by the tenant and thus, in this example, it is the landlord who should be the plaintiff.

As was also stated above, the defendant is the person or entity against whom the small claims lawsuit is filed. It is the defendant who is allegedly responsible or liable for the damage or loss suffered by the plaintiff. If more than one person and/or entity is responsible for the damage, then all such persons and/or entities should be named in the lawsuit as defendants.

7. Change of Address or Telephone Number

After becoming a party to a small claims lawsuit (whether as a plaintiff or defendant), a party must promptly notify the Court in writing of any change in that party's mailing address or telephone number. All notices concerning the lawsuit, including any changes of the trial date, will be sent to the last known address of the respective parties. Thus, a failure of a party to notify the Court of a change in address or telephone number could result in that party not receiving a Court notice, which will likely have an adverse effect on that party in terms of the disposition of the lawsuit.

8. Deadlines for Filing a Small Claims Lawsuit (Statute of Limitations)

Before filing a small claims lawsuit, a plaintiff should first try to make sure that the time period within which the lawsuit must be filed has not elapsed. As noted above, this time period is referred to as the statute of limitations. A lawsuit not filed within the time period allowed by the statute of limitations will likely be dismissed or decided against the plaintiff. Some of the more common statutes of limitations encountered in small claims lawsuits are listed below..

A. Two (2) year limitation period:

1) Personal injury.
2) Damage to personal property.

B. Six (6) year limitation period:

1) Accounts.
2) Contracts not in writing, other than a contract for sale of goods.
3) Renting of real estate.
4) Damage to real estate.
5) Recovery of personal property.
6) Promissory notes and/or contracts for the payment of money.

The applicable limitation period generally begins to run when the event that results in the damage or loss suffered by the plaintiff occurs. Thus, for example, in a lawsuit filed to recover for injuries to a person, the limitation period commences to run when the injuries occurred. Likewise, the limitation period applicable to a lawsuit filed to recover damage pertaining to a dispute involving a contract begins to run when the contract is breached or broken.

9. Filing a Small Claim Lawsuit

The filing of a small claims lawsuit requires that the plaintiff go to the Clerk's office and fill-out a claim form obtained from the Clerk. The form requires that the plaintiff provide certain information, including the name, address and telephone number (if known) of the defendant. In preparing the form, the plaintiff will want to make sure that the person or entity named as the defendant is the proper party for the type of lawsuit being filed. For example, if the lawsuit is filed to recover for damage to plaintiff's motor vehicle resulting from an accident with another vehicle, the plaintiff should name as defendant the driver of the other vehicle, not the driver's insurance company. The form also provides a space for the plaintiff to briefly describe the dispute involved and the amount that the plaintiff seeks to recover. It is not necessary for the plaintiff to provide in the form a detailed explanation concerning the dispute nor will the plaintiff be committed to recovering the exact amount of damage claimed in the form. It is enough that the information in the form allows the defendant to understand the dispute which is the subject of the lawsuit and the amount that is potentially at stake.

If the lawsuit is based upon a written contract, the plaintiff must, in addition to filling-out a claim form, provide to the Clerk one (1) copy of the contract at issue for the Court's file and one (1) copy of the contract for each defendant named.

If the lawsuit is filed to collect an account, the plaintiff must file with the claim form an Affidavit of Debt. An Affidavit of Debt provides written verification of the account. Affidavit of Debt forms are available in the Clerk's office.

The plaintiff must pay a filing fee when the lawsuit is filed. The Clerk will advise plaintiff of the amount of the fee. If a judgment is entered in plaintiff's favor in the lawsuit, the amount of the judgment should include the filing fee that was paid when the lawsuit was filed. If a judgment is not entered in plaintiff's favor, the filing fee will not be recoverable against the defendant. The plaintiff may withdraw or dismiss the lawsuit prior to trial. However, if this is done, the filing fee paid by the plaintiff to the Clerk is not returned.

The lawsuit will be set for trial when filed. The plaintiff will be advised by the Clerk of the time and date of the trial once the filing process has been completed. The lawsuit will also be assigned a cause number. All parties to a lawsuit should keep this cause number handy in the event that either or both parties need to communicate with the Clerk's office or the Court's staff regarding the lawsuit.

Any questions concerning the filing of a small claims lawsuit should be directed to the Clerk or to the Court's staff. However, again, recall that the Clerk cannot provide legal advice nor can the Court's staff. If either or both parties seek legal advice, an attorney should be consulted.

10. Notice to Defendant

It is required that the defendant named in a small claims lawsuit be provided with a copy of the claim form along with notice of the date and time of the scheduled trial. This notification is referred to as service upon the defendant. Service upon the defendant is usually accomplished either by delivery of the claim form to the defendant by the County Sheriff or by certified mailing by the Clerk. The defendant must receive notice at least ten (10) days before the scheduled trial. If the Clerk or the Sheriff is unable to serve the defendant within that time, the trial cannot go forward. In that event, the plaintiff may either dismiss the lawsuit or request a continuance of the trial in order to allow more time to serve defendant. If a continuance is requested and granted, the lawsuit still cannot proceed to trial until the defendant is served. In most cases, this will require that plaintiff provide to the Clerk a current address for the defendant.

11. Legal Representation of an Individual

An individual who is a party in a small claims lawsuit is not obligated to retain an attorney. In fact, most individuals who are parties to a lawsuit choose to proceed without an attorney, particularly considering that the parties are not bound by formal rules of practice, procedure, pleadings and evidence. However, an individual who is a party in a lawsuit is permitted to retain an attorney and have the attorney represent the individual in the lawsuit. The decision concerning whether to retain an attorney can be a difficult one and may involve a number of factors, including, but not limited to, the amount sought as damages in the lawsuit, the fee charged by the attorney, the significance and complexity of the disputed issues and whether the opposing party is represented by an attorney. If a party does hire an attorney, that party probably will not be able to recover the fees paid to the attorney as part of any judgment that may be entered in that party's favor. Exceptions to this rule do exist, such as when a written agreement or an applicable statute provides for the recovery of the prevailing party's attorney fees. An example of this would be a lease that allows the landlord to recover attorney fees in the event that the landlord is successful in a lawsuit filed against a tenant to recover rent.

12. Legal Representation of a Corporation

As a general rule, a corporation must be represented by an attorney in a small claims lawsuit, irrespective of whether the corporation is named as a plaintiff or a defendant. Small Claims Rule 8 provides a limited exception to this general rule. This exception allows a corporation to be represented in a lawsuit by a full-time employee of the corporation who is not an attorney if the following conditions exist:

A. The damages sought for or against the corporation in the lawsuit do not exceed One Thousand Five Hundred Dollars ($1,500.00); and

B. There is a corporate resolution on file with the Clerk authorizing the full-time employee to represent the corporation.

Corporate resolution forms are available in the Clerk's office.

13. Legal Representation of Sole Proprietors and Partnerships (Unincorporated Businesses)

As a general rule, a business that is not incorporated (i.e., a sole proprietorship or a partnership) must be represented in a small claims lawsuit by the owner of the business or an attorney. Small Claims Rule 8 provides a limited exception to this general rule which allows an unincorporated business to be represented by an employee who is not an attorney if the following conditions exist:

A. The lawsuit filed by or against the business seeks to recover One Thousand Five Hundred Dollars ($1,500.00) or less; and

B. The lawsuit is not filed to collect an assigned claim (such as a claim that has been assigned to a collection agency); and

C. There is an appropriate certificate on file with the Clerk authorizing the full-time employee to represent the business.

14. Legal Representation in Collection Cases

In a small claims lawsuit filed to recover a claim assigned to the plaintiff for collection (i.e., a collection agency), the plaintiff must retain legal representation, irrespective of the amount that the plaintiff seeks to recover.

15. Power of Attorney

A person who has power of attorney for an individual or entity named as a party in a small claims lawsuit cannot represent that individual or entity. This is considered to be the unauthorized practice of law.

16. Change of Judge

Either party in a small claims lawsuit may request a change of the Judge assigned to the lawsuit. The request must be in writing and must be filed with the Court within thirty (30) days after the lawsuit was commenced. If the request for change of Judge is approved, the parties will be notified of the process whereby a new Judge is appointed.

17. Request for a Jury Trial

When the plaintiff files a small claims lawsuit, the plaintiff waives or gives up the right to a trial by jury. If the defendant desires to have the lawsuit tried by a jury, the defendant must file a request for a jury trial no later than ten (10) days after the defendant is served with notice of the lawsuit. The defendant requests a jury trial by filing an affidavit in support of the jury trial demand. It is required that the affidavit state that there is a question of fact or facts in the lawsuit which the defendant believes should be decided by a jury. The defendant must also describe these facts. In addition, the affidavit should state that the request for a jury trial is made in good faith and is not requested to delay the lawsuit or make it more difficult and expensive for the plaintiff to pursue. If defendant's jury trial request is granted, it is required that defendant pay a fee to transfer the lawsuit to the Court's plenary docket. The Court will notify the parties of the amount of the transfer fee in the Court's order granting the jury trial request. The transfer fee must be paid within (ten) 10 days after the jury trial request has been granted. If the transfer fee is not paid within the time required, the lawsuit will remain pending on the Court's small claims docket. Assuming that the transfer fee is paid in a timely fashion, the lawsuit will lose its small claims status and, as noted above, will be transferred to the Court's plenary docket. The lawsuit will then be given a plenary cause number and, in due course, will be assigned a date for a jury trial. The plenary docket is much more formalized, requiring compliance with rules of evidence and procedure. Thus, if the lawsuit is transferred to the Court's plenary docket for a jury trial, both parties should seriously consider consulting with and retaining legal counsel for assistance.

18. Counterclaims

The defendant in a small claims lawsuit is permitted to file a claim against the plaintiff in the same lawsuit. This is referred to as a counterclaim.

If a counterclaim is filed by the defendant, it must be received by the plaintiff at least seven (7) days before the scheduled trial. If the plaintiff does not receive the counterclaim within that time, the plaintiff may request a continuance (postponement) of the trial date to allow plaintiff sufficient time to prepare to defend against the counterclaim. The counterclaim will not be tried separately. At trial, the Court will hear and receive evidence pertaining to all contested issues in the lawsuit, including any counterclaims.

The Court cannot enter judgment on a counterclaim for an amount in excess of the Court's jurisdictional limit of Six Thousand Dollars ($6,000.00). Thus, if the amount that the defendant seeks by reason of a counterclaim filed in a small claims lawsuit exceeds this limit, the defendant is deemed to have waived the right to recover the excess amount. Should the defendant decide to pursue the counterclaim for an amount in excess of the Court's jurisdictional limit, the defendant should petition the Court to transfer the lawsuit to the Court's plenary docket, which does not have a limitation on damages. In response to such a petition, the Court, in its discretion, may transfer

just the counterclaim or the entire lawsuit to the Court's plenary docket. If a transfer of the lawsuit to the Court's plenary docket occurs, whether in whole or in part, both parties should consider consulting with and retaining legal counsel for assistance because, as noted above, the plenary docket is much more formalized in terms of evidence and procedure.

19. Third-Party Claims

A defendant in a small claims lawsuit may believe that another person or entity who is not a party to the lawsuit is responsible for all or part of the damages that plaintiff seeks to recover against the defendant. If so, the defendant may want to consider adding this person or entity to the lawsuit by filing a third-party claim against this other person or entity (third-party defendant). The filing of a third-party claim is accomplished by filling-out an appropriate form obtained from the Clerk. The form will require that the third-party defendant be identified by name so that the third-party defendant can be named as a party to the lawsuit. The Clerk will also need an address for the third-party defendant so that the third-party defendant can be served and notified of the scheduled trial. The defendant should also briefly explain in the claim form the reason or reasons that the defendant believes that the third-party defendant is responsible to the defendant for some or all of the damages that the plaintiff seeks to recover in the lawsuit.

20. Discovery Prior to Trial

A party to a small claims lawsuit may request information from any other party if it is believed that the information is needed in connection with the lawsuit. This process of requesting and receiving information prior to trial is called discovery. Any discovery request must be submitted to the Court for review. The Court will then decide, in its discretion, whether and/or to what extent the discovery request will be allowed. Typically, a discovery request will be granted if it is limited to information relevant to the contested issues in a lawsuit and the information cannot be obtained by any other means available to the party making the request. If a discovery request is allowed by the Court, the party to whom the discovery request is directed will be provided with the discovery request and will be given a certain amount of time, usually thirty (30) days, within which to respond to the discovery request.

21. Settlement

Settlement of a small claims lawsuit is encouraged. Among other things, settlement of a lawsuit will eliminate the risk, anxiety and costs associated with a trial. The parties may attempt to negotiate a settlement of a lawsuit before it actually comes to trial. If a lawsuit is settled prior to the day of the scheduled trial, the parties should notify the Court's staff. Then, depending upon the terms of the settlement, the Court's staff will advise the parties what is needed from them in order to confirm the settlement for purposes of the Court's record.

If, on the day of the scheduled trial, the lawsuit has not settled, the Court requires that the parties meet prior to trial in order to discuss the contested issues and to make a good faith attempt to resolve some or all of these issues. The Judge may be available to assist the parties in connection with their efforts to settle the case although the Judge's involvement, if any, is necessarily limited due to the fact that the Judge must remain unbiased and cannot provide legal advice.

Experience has shown that parties to a lawsuit are often able to negotiate a settlement even though there appears to have been no hope of doing so when the lawsuit was filed. This usually requires that the parties control their emotions and honestly assess the relative strengths and weaknesses of their respective claims and defenses. Any such settlement discussions, to be productive, should be undertaken and conducted in a reasonable and civil manner.

If the parties are able to settle all or some of the disputed issues in a lawsuit on the day of the scheduled trial, they should advise the Court's staff. Then, depending upon the terms of the settlement, the Court's staff will advise the parties what is needed from them to confirm the settlement for the Court's record, including any forms that need to be prepared and signed by the parties. If the lawsuit is not settled in its entirety, the trial will then proceed on any issues which were not settled.

22. Continuance of a Trial or Hearing

Continuances (postponements) of a trial or a hearing will be granted only if good cause is shown. A continuance of a trial or a hearing should be requested as soon as the party seeking the continuance is aware of the circumstances which caused the party to seek a continuance. Except in unusual circumstances, no party shall be allowed more than one (1) continuance of a trial or hearing in a particular case. A continuance must be specifically approved by the Judge. If a continuance request is granted, notice of the continuance and the new date and time of the rescheduled trial or hearing will be provided to all parties. If any party is in doubt as to whether a trial or hearing has been continued, that party should contact the Court's staff and inquire. If a continuance request is denied or not ruled upon prior to the scheduled trial or hearing, the trial or hearing will go forward as scheduled.

23. Trial

The parties to a small claims lawsuit will have only one opportunity to try the lawsuit. Thus, it is important that the parties to a lawsuit come to trial fully prepared to present all evidence they believe to be relevant to the lawsuit and the disputed issues. That would include having present all persons who will be called to testify as witnesses at trial. In addition, a particular party should bring to trial all documents and things which that party intends to offer as evidence. The Court will retain all documents and things that are admitted into evidence at trial. It is also required that a party provide to the opposing party copies of all documents which that party intends to

offer into evidence. Thus, the respective parties should bring the original and at least two copies of each document that will be offered into evidence at trial. If a party fails to bring sufficient copies of documents to be offered as evidence, that party will be required to make copies before the trial commences at the Clerk's office for a fee.

A party to a lawsuit and that party's witnesses should plan to arrive at the Courthouse at least ten (10) minutes prior to the scheduled start time of the trial. When a party arrives at the Courthouse, that party should first check-in with the Court's staff. Once the parties have all checked-in, they will be required to meet in order to discuss settlement, as described in Section 21 above. If the parties are unable to settle their case, they should notify the Court's staff. The staff will then instruct the parties as to what they need to do before the trial commences. This will include allowing a party to review and/or examine all documents and things that the opposing party plans to offer as exhibits at trial. This review of exhibits prior to trial serves to expedite the trial process because it makes it easier for a party determine whether to make an objection to the opposing party's request that a particular exhibit be admitted as evidence at trial. It is important that the parties make sure that all potential trial exhibits are exchanged prior to trial. If an exhibit that a party offers as evidence at trial was not shown to the opposing party prior to trial, it may be excluded from evidence at the Judge's discretion.

Once the parties have exchanged their exhibits, all exhibits should be brought to the Court's staff to be marked. Then, the parties will be directed to a courtroom where the trial will take place. The Judge should follow soon thereafter. The Judge will first identify the case for the record and make sure that the proper parties and/or their attorneys are present. The Judge will then briefly describe the trial process. The Judge will also answer any questions that the parties may have regarding the process and the ruling that will be made. All persons who will be testifying at trial will be sworn-in by the Judge. The trial will then commence.

At trial, the plaintiff will present evidence first. The plaintiff typically does so by testimony whereby the plaintiff explains the reason or reasons why the plaintiff believes that defendant is liable to the plaintiff for the damages claimed in the lawsuit. The plaintiff will also need to provide evidence regarding the damages suffered. The plaintiff may offer documents and things into evidence which are believed to support the claims asserted by plaintiff against the defendant. These documents may include things like receipts, written leases, invoices, estimates to repair and photographs. A decision as to whether such documents or things are admitted as evidence will be made by the Judge. Admissibility will primarily depend upon whether the document or thing is relevant to the claims at issue in the lawsuit.

After the plaintiff testifies, the Judge may allow the defendant to ask questions of the plaintiff. This is called cross-examination. Cross-examination is for questions only. It is not an opportunity for defendant to tell defendant's side of the story. After the testimony of the plaintiff has been completed, plaintiff may call other persons to testify. The Judge may allow these witnesses to be cross-examined by the defendant as well.

After the plaintiff has finished presenting evidence, the defendant will then be permitted to present evidence. This evidence is typically presented by way of the testimony of defendant and any witnesses that defendant may call to testify. Defendant's presentation may also include the offering of documents and things into evidence, the admissibility of which will be determined by the Judge. The Judge may also permit plaintiff to cross-examine the defendant and defendant's witnesses.

The plaintiff will then be allowed to present any additional evidence in support of the claims asserted by plaintiff in the lawsuit and/or to rebut the evidence given by defendant. The defendant may also be given another opportunity to thereafter present evidence if the Judge determines that it would be appropriate. Generally, the Judge will allow the parties to continue to take turns presenting evidence so long as the evidence is relevant to the lawsuit and not repetitive. The purpose of this is to make sure that the parties leave the courtroom believing that they have had a fair opportunity to present all evidence relevant to the lawsuit.

During the trial, the Judge may stop the proceedings at any point to ask questions of the parties or witnesses. In addition, the Judge may, with or without a request from either party, inspect scenes or locations involved in the lawsuit. This is entirely within the Judge's discretion.

As noted above, as long as evidence is relevant to the lawsuit, it is likely to be admitted at trial. That would include hearsay evidence. Hearsay is generally defined as evidence of a statement made by someone which is asserted as truth despite the fact that the individual making the statement is not present at trial and therefore not subject to cross-examination. Know that even though hearsay in a small claims lawsuit is generally admissible, the weight to be given to the hearsay evidence is within the discretion of the Judge. Know too that not all evidence pertaining to a lawsuit is admissible. Examples of evidence that is not admissible would be settlement negotiations between the parties prior to trial and discussions which are privileged (such as those between a party and the party's attorney).

Although the trial is informal, all witnesses will be sworn by the Judge to tell the truth. Thus, it is critical that all persons who testify at trial tell the truth. A witness who knowingly provides false testimony could be subject to contempt and even a charge of perjury.

Once the trial is concluded, the Judge will usually take a decision or ruling in the lawsuit under advisement. This means that the ruling is not made right away but, will be rendered after the Judge has had an opportunity to fully review and consider the evidence and applicable law. A written ruling containing the Judge's decision in the case should follow within sixty (60) days after the trial has been completed.

The decision of the Judge will be based primarily upon the facts presented by the parties at trial and on the law as it applies to those facts. Therefore, it is important that all evidence which is favorable

to a particular party be communicated by that party to the Judge at trial. To allow a party the best opportunity to do so, it is recommended that each party be fully prepared to show to the Judge all information needed to allow the Judge to issue a ruling favorable to that party. Bear in mind that the Judge is totally without knowledge of the events surrounding the lawsuit (other than what is contained in the Court's file) and can only rely upon the evidence presented at trial as a basis for a decision.

24. Burden of Proof at Trial

The party attempting to recover damages by way of the small claims lawsuit, whether as the plaintiff or the defendant, has the burden of proof. That burden is by a preponderance of the evidence. What this means is that the evidence of the party with the burden of proof must have the greater weight. This does not necessarily require that the party with the burden call a larger number of witnesses to testify or that this party present a more significant quantity of evidence. Rather, what is significant is the nature of the evidence. The evidence which convinces the Judge most generally of its truthfulness is of greater weight. In other words, for a particular party to prevail in a lawsuit, the evidence presented by this party must be more convincing than that of the opposing party. If each party's evidence is equal, the party that has the burden of proof should lose. For example, if plaintiff has the burden of proof and a decision in the lawsuit comes down to plaintiff's word against the word of the defendant, and assuming that both are equally believable, the Judge should find that plaintiff did not carry the burden of proof and cannot prevail.

25. Proof and Evidence of Liability

The party seeking to recover damages in a small claims lawsuit must first prove that the opposing party is liable. To prove liability, it must be shown by the damaged party that the opposing party has done or failed to do something which renders the opposing party responsible for the damages suffered. Examples of this would include the following: a failure to pay rent owed to a party by the opposing party; an accident resulting in damages to a party's person or property that is the fault of the opposing party; and, work done by a party at the request of the opposing party for which the party that performed the work has not been paid. If the party seeking to recover damages does not prove that the opposing party is liable, the damaged party will not prevail in the lawsuit, despite the damages suffered.

26. Proof and Evidence of Damage

The party seeking to recover damages in a small claims lawsuit must also prove that damages have occurred and the amount of the damages. Typically, damages are monetary. The Judge cannot speculate or guess concerning damages. Thus, if damages are not proven, the Judge will not be able to enter a judgment in favor of the damaged party, even if it is shown by the evidence that the opposing party is liable.

The evidence that is necessary to prove damages will depend upon the type of claim that is asserted in the lawsuit. For example, when property is damaged, the amount of damages to be awarded is measured by the difference between the value of the property before the damage and the value of the property afterwards. In many cases involving property damage, an estimate to repair the damaged property may be sufficient to establish the before-and-after value differential. If, however, the damaged property is actually destroyed as a result of an accident or event, the damages are usually not measured by what it would cost to replace the property. Rather, damages are equal to the fair market value of the property just prior to the accident or event. This prevents the damaged party from receiving more than what was lost and being unjustly enriched as a result.

In a breach of contract lawsuit, damages are usually measured by what it would cost to put the non-breaching party in the same position had the contract not been breached. There may also be consequential damages that flow from the breach of contract and which are also recoverable by the non-breaching party. Consequential damages are viewed as being outside of the contract itself but, may be recovered if it is determined that the damages were reasonably foreseeable in the event of a breach of the contract. An example of consequential damages would be a situation where a contract for the construction of a swimming pool includes a deadline for the work to be completed. The damages that flow from a failure to meet the deadline could include consequential damages due to loss of revenue to the pool's owner by virtue of a delay in the planned opening of the pool.

If the lawsuit seeks damages for personal injuries, the damages recoverable include medical expenses incurred to treat the personal injuries, pain and suffering endured by the injured party, permanent loss of physical function and lost wages for time missed from work as a result of the personal injuries.

Damages in other types of case may be more difficult to prove. If a party is not sure what proof is needed at trial to prove damages, it is recommended that this party seek legal advice.

It is important to remember that proof as to damage must have substance. Damages cannot be awarded upon mere speculation.

If, at the time of trial, the damaged party believes that damages have occurred or increased between the date that the lawsuit was filed and the date of trial, the damaged party may seek to recover these additional damages and should present evidence in support of same. Examples of damage that might occur or increase after the filing of a lawsuit include additional rent, newly discovered damage to property and continued accrual of interest on an account that is owed.

With respect to damages claimed, the damaged party has a duty to mitigate damages. For example, if a tenant is evicted by the landlord prior to the end of a lease term, the landlord is obligated to mitigate damages by undertaking whatever cleaning and repairs are necessary in order to allow the property to be expeditiously relet, irrespective of when the lease term for the evicted tenant is to expire.

27. Witnesses and Exhibits for Trial

As stated above, a party to a small claims lawsuit should make sure that all persons that the party wishes to call to testify at trial attend the trial. If a witness refuses to appear and testify at trial voluntarily, a party may request the Clerk to issue a subpoena ordering the witness to appear at the trial. Requests for subpoenas should be made at the earliest possible date.

Bringing the proper documents and things to be offered as exhibits at trial is extremely important. For example, if a lawsuit involves a claim by a plaintiff that a defendant damaged rental property, the plaintiff should try to take photographs of the damaged property and bring these to trial. Likewise, if the defendant in that same lawsuit has photographs of the property in question which show that the property was not actually damaged, the defendant will want to bring these photographs to trial in order to show that defendant is not liable. As stated above, documents and things that a party wishes to offer into evidence at trial will be marked as exhibits prior to trial. If an exhibit is admitted into evidence at trial, it will become a part of the Court's record and cannot be returned until the lawsuit has run its course, including any appeal of the Judge's ruling. Original documents are the best evidence, as opposed to copies. However, if the Judge is satisfied as to the genuineness of a copy of a document offered into evidence, the Judge may allow the copy to be admitted into evidence in place of the original document.

The parties to a lawsuit are responsible for bringing witnesses and exhibits to trial. The parties are also responsible for the presentation of their own evidence. The Judge is under no duty to act as an advocate for either party at trial.

28. Judge's Decision--Judgment

Once the trial of a small claims lawsuit is concluded, the Judge will likely delay making a decision until a later date. As noted above, this is called taking the decision under advisement. Doing so allows the Judge to more thoroughly review and reflect upon the evidence and undertake any research that the Judge believes is appropriate and applicable to the contested issues. The Judge's ruling will be in writing and will usually be issued within sixty (60) days from the trial. The ruling is called a Judgment Order. It will set forth and describe the actual ruling, including (as applicable) the amount of the judgment to be entered for or against a particular party and the reasons for the ruling. The Judgment Order will be sent to the parties or to their respective counsel, as the case may be, after it is issued. The Judgment will be recorded in the Court's records and also in the Clerk's office.

29. Plaintiff Fails to Appear for Trial

If the plaintiff fails to appear on the day and at the time specified for trial in a small claims lawsuit, the Judge will dismiss the

lawsuit. This dismissal could be with or without prejudice, at the Judge's discretion. A dismissal without prejudice allows the plaintiff to refile the lawsuit, which will require paying another filing fee. A dismissal with prejudice constitutes a final dismissal, which prevents plaintiff from filing the lawsuit again.

Should the plaintiff fail to appear at trial and if the defendant appears and has filed a counterclaim, the Judge will enter a default judgment against the plaintiff on the defendant's counterclaim. A default judgment is discussed in the following section.

30. Defendant Fails to Appear for Trial--Default Judgment

If the plaintiff appears for trial in a small claims lawsuit and the defendant does not, and assuming that defendant was properly served with notice of the lawsuit and the trial setting, the plaintiff may request a default judgment against the defendant. The plaintiff will then be given paperwork to fill-out in order to formally request the default judgment. Included in this paperwork are the following:

A. A motion stating that defendant failed to appear for trial and alleging that plaintiff is entitled to a judgment for a stated amount of damages against the defendant.

B. An affidavit that states that defendant has no known legal, physical or mental disability and that defendant is not known to be an active member of the military.

The plaintiff will also be required to submit evidence to support the amount of damages that plaintiff seeks to recover by reason of the default judgment. This would include, for example, invoices, estimates to repair, contracts, photographs and/or an itemized summary of the damages claimed. Assuming that the evidence sufficiently substantiates the amount of damages claimed by plaintiff, the Judge should enter a default judgment for that amount in favor of the plaintiff and against the defendant. If the damage evidence is insufficient, the Judge may set the case for a separate hearing on damages.

31. Vacating or Setting Aside a Default Judgment

The party against whom a default judgment has been entered in a small claims lawsuit may file a written request with the Court to have the default judgment vacated or set aside. Such a request should be filed as soon as possible. The request should furnish an explanation as to why the party against whom the default judgment was entered failed to appear for trial. The request should also show that setting aside the default judgment is justified because the defaulted party has a meritorious claim or defense that the party intended to assert in the lawsuit. The Judge has a number of options with respect to a ruling on any such request. The Judge may give the opposing party an opportunity to file a written statement in opposition to the request that the default judgment be set aside. The Judge may set the request for hearing in order to hear oral argument or evidence concerning the request. The Judge may issue a ruling on the request to set aside the

default judgment without further proceedings. If the default judgment is set aside or vacated, the lawsuit will be scheduled for trial once again.

32. Appeal of the Court's Decision

If one or both parties are not satisfied with the Court's decision in a particular small claims lawsuit, an appeal of the decision may be taken to the Indiana Court of Appeals. To start the appeal process, the appealing party must take certain action within thirty (30) days of the Court's decision. Due to the complicated rules for taking an appeal, the party seeking the appeal should consult with legal counsel as soon as possible after the Court's decision has been entered.

If there is no action taken to commence an appeal of the Court's decision within thirty (30) days, the judgment entered by reason of the appeal becomes final.

33. Disposition of Exhibits Following Judgment

Once the time for an appeal has passed and assuming that the Court's judgment in the lawsuit was not appealed, any trial exhibit which was admitted as evidence in the lawsuit can be released back to the respective party that offered the exhibit as evidence. A trial exhibit will be released to a particular party upon request personally made at the Small Claims office and upon presentation of appropriate identification.

If there is an appeal of the Court's judgment, all exhibits admitted into evidence are to be retained by the Court for two (2) years following the termination of the appeal. However, if the appeal results in additional legal proceedings (such as, for example, a retrial), the exhibits shall be retained by the Court for two (2) years from the termination of these subsequent legal proceedings.

Any exhibit which is not reclaimed within four (4) months after it is available to be released may be disposed of pursuant to the applicable rules and guidelines issued by the Indiana Supreme Court.

34. Collection of Judgment

A judgment in a small claims lawsuit is the Court's determination with respect to the contested legal and factual issues in the lawsuit. If the judgment is in favor of the plaintiff, it typically involves a legal determination that the defendant owes the plaintiff a certain sum of money along with the filing fee paid by the plaintiff to initiate the lawsuit. This discussion concerning collection will proceed on the basis that a judgment has, in fact, been entered in favor of the plaintiff and against the defendant.

Once entered, the judgment will be recorded in the Clerk's judgment docket. The judgment then becomes a lien on any real property owned by the defendant in this county now or in the future. For the judgment to become 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 and delivering it, along with the necessary fee, to the Clerk of the county where the judgment is to be recorded.

Once the judgment is recorded, the lien against real estate owned by defendant in the county where it is recorded will last for a period of ten (10) years. At the end of this ten-year period, the lien will expire. However, the lien against real estate can be extended for another ten-year period. The procedure for doing so is described in Ind. Code Section 34-11-2-11.

The expiration of the lien on real property will prevent the plaintiff from collecting the judgment through execution on real property. However, the judgment itself may be enforced for up to twenty (20) years after its entry. Following the expiration of the twenty-year period, the judgment is deemed satisfied under Ind. Code Section 34-11-2-12.

The Court is not responsible for collecting the judgment. Doing so is plaintiff's responsibility. It is hoped that a judgment is paid promptly and in full, assuming that same is not appealed. If the judgment amount cannot be paid in full, the parties are encouraged to agree to payment arrangements, preferably in writing. As to any such agreement to make payments, defendant should make every effort to comply. As far as the actual payment or payments made by defendant to plaintiff to satisfy a judgment, it is recommended that these be made through the Clerk's office (as opposed to being made directly to the plaintiff). That way, the Clerk can keep a record of the payments that can be readily referenced should a dispute later arise as to whether or not a payment has actually been made. It should be understood that neither the Clerk nor the Court will monitor payments in order to determine whether and/or to what extent a particular judgment has been paid. The parties are responsible for doing so. However, if there is a dispute in that regard, either party may bring this dispute concerning payments to the Court for a resolution.

Should the judgment not be fully paid in a timely manner and if the parties are unable to agree to payment arrangements, there are legal procedures that can be employed by plaintiff to assist with collection. Some of the more common procedures are listed and discussed below:

A. Wage Garnishment. This is an order from the Court requiring that a certain portion of wages received by defendant from defendant's employer be withheld and then sent to the Clerk to be applied against a judgment. Indiana law limits the amount that can be garnished and regulates the kinds of income that can be garnished. Only one garnishment can be applied at one time. Also, garnishments are applied in the order that they are received by defendant's employer. Thus, it is important to get in line first in order to increase the likelihood of payment via a garnishment. If the defendant changes jobs, the plaintiff will need to obtain another garnishment order to be applied against the wages earned by defendant at defendant's new place of employment. Before a garnishment may issue, the Court may require

that the employer answer interrogatories (written questions) in order to confirm that defendant is employed there and is earning wages sufficient enough to be garnished.

B. Bank Garnishment. This is an order from the Court requiring that a bank where the defendant may have funds on deposit pay all or a portion of such funds to the Clerk. These funds are then applied against the judgment. Generally, before a bank garnishment order can be issued, it is required that the Court receive confirmation from the bank that defendant has funds on deposit there. This is typically done by way of interrogatories (written questions) sent to the bank in question.

C. Wage Assignment. This is a written agreement whereby defendant agrees to have a certain amount withheld by defendant's employer from wages owed to defendant. The benefit of a wage assignment (as compared to a garnishment) is that it is flexible in terms of the amount withheld from defendant's wages and it can also be implemented quickly. The drawback of a wage assignment (as compared to a garnishment) is that it may not take priority over any pending or future garnishment orders.

D. Execution Against Personal Property. The personal property of the defendant 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 a plaintiff consult with an attorney if the plaintiff is considering this particular collection option.

The starting point for these and any other formal legal proceedings to collect a judgment is the filing of a motion for proceedings supplemental. A motion for proceedings supplemental is a written request by plaintiff that the defendant be ordered by the Court to appear at a hearing and answer questions, under oath, concerning financial resources available to satisfy the judgment.

Prior to going forward with the hearing on plaintiff's motion for proceedings supplemental, the Court requires that the parties meet to discuss the judgment and the financial information needed by plaintiff to assist with collection. The parties should also, at that time, discuss payment arrangements. Often, the parties are able to come to an agreement whereby defendant commits to satisfy the judgment in a reasonable manner or within a reasonable period of time. At the very least, the plaintiff may be able to obtain the financial information needed from defendant and thereby avoid a formal hearing on the motion for proceedings supplemental. Either way, the Court requires that the parties conduct themselves in a respectful manner during these discussions. At the conclusion of these discussions, the parties should advise the Court's staff whether or not they have come to an agreement regarding payment of the judgment and, if so, the terms of the agreement. The parties should also advise the Court staff if either wish to go forward with the hearing on plaintiff's motion for

At any time in the future and until the judgment is paid, the plaintiff may request that the Court order defendant to return for another hearing to allow plaintiff to inquire as to defendant's employment and finances. The granting of this request is discretionary and will likely depend upon the reasonable likelihood that defendant's financial situation has improved since the last hearing.

The Court order scheduling the case for hearing on plaintiff's motion for proceedings supplemental will require defendant to appear. If defendant is served personally with notice of the hearing and does not attend, the Court may issue a civil warrant for defendant's arrest due to defendant's failure to abide by the Court's order requiring defendant to appear. This civil warrant is commonly referred to as a body attachment. The body attachment will require defendant to surrender to the Court or to the Boone County Sheriff's Department and to post a bond to assure defendant's appearance at the rescheduled hearing on plaintiff's motion for proceedings supplemental. The bond money will be applied to the judgment entered against defendant. If unable to post the bond set by the Court, the defendant may be jailed.

If defendant is served with the Court order scheduling a hearing on plaintiff's motion for proceedings supplemental by means other than personal service and if defendant does not thereafter appear at the hearing, the Court may issue a body attachment against defendant with a promise to appear. This civil warrant will require defendant to surrender to the Court or to the Boone County Sheriff's Department. Defendant will then be given the date of the rescheduled hearing on plaintiff's motion for proceedings supplemental and will be required to sign a document confirming the date and time of the rescheduled hearing and acknowledging that defendant is obligated to appear at that hearing. If defendant then fails to attend the rescheduled hearing, a body attachment will be issued for defendant's arrest for failing to abide by the signed promise to appear made to the Court. The amount of defendant's bond will be set at the Court's discretion.

In order for the Court to issue a body attachment against defendant, plaintiff must furnish to the Court defendant's social security number.

Plaintiff is also required to appear for the hearing on plaintiff's motion for proceedings supplemental. If plaintiff fails to appear, the Court will require that plaintiff provide an explanation, in writing, concerning the reason or reasons that plaintiff did not show. Depending upon the reason or reasons given, the Court may delay plaintiff's further collection efforts for a time to be determined by the Court.

If the defendant is not served with the order scheduling a hearing on plaintiff's motion for proceedings supplemental, plaintiff may request that the hearing be continued to allow plaintiff time to find an address where defendant can be served. If a good address is found for defendant and, assuming that plaintiff wishes to reschedule the hearing, plaintiff should advise the Court of the new address and request that the hearing be rescheduled.

If the defendant pass away prior to collection of the judgment, the plaintiff should consider filing a claim against the defendant's estate if it is decided to continue collection efforts.

whether advance notice is required in a particular situation to terminate a lease, it is best to assume that advance notice is required. Of course, the safest route in this situation is to consult with an attorney.

If a landlord accepts a late rent payment and unless the lease provides otherwise, this will likely be considered as a waiver of any breach of the lease due to the late payment. If, thereafter, the landlord is no longer willing to accept late rent payments, the landlord should give the tenant reasonable notice, preferably in writing, that failure to timely pay rent will be considered a breach of the lease, notwithstanding the previous acceptance by the landlord of a late rent payment.

Reasonable late charges for rent not paid when due may be assessed by the landlord if these were previously agreed to by the parties (i.e., provided for in the lease agreement).

Landlords are generally permitted to enter the rental premises at reasonable times and with reasonable notice to make repairs and inspections. Landlords are also entitled to immediate access to the rental premises in order to make emergency repairs. Nevertheless, the tenant is entitled to peaceful enjoyment of the rental premises without unwarranted intrusions by the landlord.

As a general rule, a landlord has no duty to make repairs to leased premises unless the landlord agrees to do so. A landlord will typically agree to maintain electrical systems, plumbing systems, sanitary systems, heating, ventilating and air conditioning systems, elevators and appliances provided with the rental premises. Tenants must inform the landlord promptly and, if possible, in writing when systems or appliances that the landlord agreed to maintain are in need of repair. If the landlord fails to make required repairs within a reasonable time after notice, the tenant may do what is necessary to have the repairs made. The tenant may then be permitted to deduct the cost of these repairs from rent owed by the tenant to the landlord.

Tenants are expected to leave the rental premises in as clean a condition as when they took possession, normal wear and tear excepted. If there is damage to the rental premises in excess of normal wear and tear or if the cleaning of the rental premises exceeds that which would normally be anticipated, the landlord will be allowed to recover a judgment against the tenant for some or all of the expenses incurred to clean, repair and rehabilitate the rental premises.

In assessing the amount that the landlord is entitled to recover for damage to the rental premises beyond normal wear and tear, the measure used is the difference between the fair market value of the property damaged before and after the damage occurred. Estimates for the cost of repairs to the property involved and/or proof of the amount actually spent to make the repairs are admissible at trial to prove damage to the rental property beyond normal wear and tear.

Once a lease is entered into, it is recommended that the landlord and tenant walk through the premises together and make a list of all damage evident at that time. It may also be helpful to take photographs to show the condition of the premises when the lease term commences.

Then, when the tenant is moving-out, the parties should repeat the process. This will likely eliminate most if not all disputes concerning damage, if any, to the rental premises and hopefully avoid litigation on that issue.

As noted above, if litigation is filed as a result of alleged damage to a rental premises, photographs of the premises to show damage or the lack thereof tend to be very persuasive from an evidentiary standpoint.

The landlord may not keep any portion of a security deposit unless there is back-rent due or damage to the premises. The landlord must, within forty-five (45) days after the termination of the lease and/or delivery of possession of the rental premises to the landlord, either refund in full the security deposit or deliver to the tenant an itemized, written statement showing all of the credits taken against the deposit. If the landlord fails to do so, there could be sanctions imposed against the landlord, including a refund of the entire deposit and an award of attorney fees in the tenant's favor. If the tenant believes that the landlord failed to comply with the landlord's obligations regarding the security deposit, it is suggested that the tenant consult with an attorney to receive legal advice concerning the tenant's rights in that regard.

Landlords should keep complete financial records pertaining to the landlord/tenant relationship, including a record of the security deposit and all rent payments received. The tenant should also maintain copies of cancelled checks, bank statements and other records to confirm payment of rent. It is not recommended that rent be paid in cash as this does not create a record to confirm whether a payment was actually made. Nevertheless, if a cash payment is made by a tenant to a landlord, the tenant should insist upon a receipt in return for the cash payment.

All keys to the rental premises in the tenant's possession should be returned to the landlord as soon as the premises have been vacated. Additional rent may be charged by the landlord until the keys are returned or until the locks have been changed. In addition, if keys are not returned by the tenant, the cost of the new locks may be charged to the tenant.

The written lease agreement between the parties is the document that will usually govern the respective duties and responsibilities of the landlord and tenant as to the care and maintenance of a rental premises. However, to the extent that the responsibilities and duties set forth in a given lease are contrary to Indiana law or are otherwise unreasonable or unfair, the Court is not obliged to enforce the lease. For further information regarding the legal duties and responsibilities that a landlord and tenant have with respect to the rental premises and the remedies available to each, it is suggested that reference be made to Ind. Code Section 32-31-7 and Ind. Code Section 32-31-8.

Generally, utility shut-offs and/or lockouts by the landlord prior to a Court order of eviction are permitted only when the premises have been abandoned by the tenant. Improper shut-offs or lockouts could subject the landlord to a claim for damages by the tenant.

If a landlord is awarded possession of the rental premises via an ejectment action and if the tenant leaves property behind, the landlord may seek a Court order which clarifies the landlord's responsibility regarding the property. This could include an order allowing the removal of a tenant's personal property. The landlord may also deliver a tenant's personal property to a warehousemen for storage and eventual disposition in accordance with Ind. Code Section 32-31-4. A landlord has no liability for loss or damage to a tenant's personal property that has been abandoned. However, a landlord should not retain a tenant's personal property left behind, particularly if it has value. Doing so may be viewed as conversion and could subject the landlord to criminal charges. If in doubt as to what to do with property left behind by a tenant, the landlord should seek legal advice.

Landlords are required to mitigate any damage resulting from a landlord/tenant relationship. For example, if the tenant has vacated the rental premises before the lease term expires, the landlord must make a reasonable effort to relet the premises as soon as possible and thereby reduce the rent owed by the tenant who vacated.

It is strongly recommended that a landlord obtain as much information as possible concerning a prospective tenant prior to entering into a lease with the tenant. This would include information concerning the tenant's employment, the tenant's credit history and the tenant's track record with other landlords. Likewise, a tenant should seek information concerning the landlord, including the length of time that the landlord has been in business, the landlord's reliability with respect to upkeep of premises owned by the landlord and the landlord's history in terms of litigation. Obtaining this sort of information before the lease is signed tends to eliminate or reduce problems and disputes afterwards.

Under Ind. Code Section 32-31-6, a landlord is entitled to file a small claims lawsuit to obtain emergency possessory relief if a tenant is committing or threatening to commit waste to the premises. Ind. Code Section 32-31-6 also allows a tenant to file a small claims lawsuit to obtain emergency possessory relief if a landlord has unlawfully interfered with the tenant's access or possession to rental premises. Examples of interference with a tenant's possessory rights would include changing locks or shutting-off utilities or other essential services.

36. Concluding Remarks--Courtesy and Civility are Manadatory

Small claims litigation can be an emotionally challenging endeavor, whether as plaintiff or defendant. This is a natural by-product of the adversarial nature of litigation. Nevertheless, and despite the emotional investment that the parties have in the litigation and their respective positions, it is paramount that the parties always keep in mind that no emotional demonstrations, angry outbursts or violence of any sort will be tolerated. Any such wrongful action could result in sanctions against the offending party, including a monetary fine or even arrest, depending upon the circumstances.

The Court and its staff will endeavor to treat litigants and all other persons with dignity and respect. The parties to small claims litigation should do likewise.
