

STATE OF INDIANA – COUNTY OF MARION  
IN THE MARION CIRCUIT COURT

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**Notice of the Adoption of Marion County Small Claims Court Rules**

**October 15, 2012**

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On September 4, 2012, this Court published for comment proposed rules to govern the Marion County Small Claims Courts. Following a comment period ending October 5, 2012, the Court modified the Rules as proposed. Pursuant to Indiana Trial Rule 81 and Indiana Code § 33-34-5-6, the Marion County Circuit Court now adopts the attached rules.

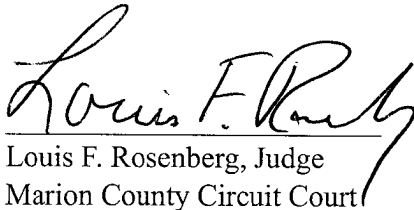
The Clerk is ORDERED to place said Rules in the Record of Judgments and Orders and to post these Rules in the Marion County Clerk's office, as well as the Marion County website. The Clerk shall also mail a copy of these Rules to the Indianapolis Bar Association and the Marion County Bar Association.

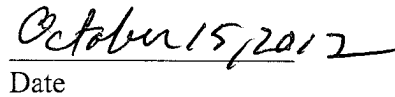
A paper copy of these Rules will be available for viewing at:

Clerk of Marion County  
City-County Building, W122  
200 E. Washington St.  
Indianapolis, Indiana 46204

An electronic version of these Rules will be available at: <http://www.courts.IN.gov>

These rules will be effective on March 01, 2013, unless otherwise specified.

  
Louis F. Rosenberg, Judge  
Marion County Circuit Court

  
Date

## GENERAL COMMENTS TO THE RULE

The Circuit Court is charged by Ind. Code § 33-34-3-6 and 7 to “make and adopt uniform rules for conducting the business of the small claims court . . . according to a simplified procedure to enable any person either to seek or to defend against a small claim without consulting or being represented by an attorney.” In discharging this responsibility, the Court has decided to enhance the normal opportunity for comment by laying these proposed rules before an Advisory Committee.<sup>1</sup> The Court has also attended all of the public hearings of the Supreme Court Task Force on Marion County Small Claims Court and has carefully read its Report of May 1, 2012. Finally, the Court has elicited the advice and assistance of the nine sitting Small Claims Court judges.

At the end of the text of each proposed rule, the reader will find citations to any relevant Task Force finding or recommendation, as well as to relevant passages of a February 2012 report on “Landlord-Tenant Court Proceedings in Indiana” co-authored by Professor Florence Wagman Roisman of the Robert H. McKinney School of Law and Brienne Delaney, a 2012 graduate of the law school. Occasionally, the citations are supplemented by brief comments.

It should be noted that these Rules necessarily have a limited function. Most importantly, these Rules may not conflict with the Indiana Small Claims Rules. These rules may supplement, but not supplant the State rules.

### 100 GENERAL PROVISIONS

#### Rule LR49-SC01-101 Purpose, Scope and Authority

- A. The purpose of these rules is to promote uniformity and fairness of practice and procedure among the township divisions of the Marion County Small Claims Court.
- B. These rules are intended to supplement the Indiana Rules for Small Claims. In the event of a conflict between these rules and the Indiana Rules, the latter shall govern.
- C. These rules shall apply to all divisions of the Marion County Small Claims Court and to all Judges serving in that Court, regardless of their formal designation as part-time or full-time.
- D. The Circuit Court is authorized to promulgate these rules by Ind. Code §§ 33-34-3-6 - 7.

*Adopted Oct. 15, 2012 effective March 1, 2013.*

#### Rule LR49-SC01-102 Citation

These rules may be cited as LR49-SC \_\_\_\_.

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<sup>1</sup> Advisory Committee Members: Chair John Day, Indiana State Representative, Alison Becker, Northern Indiana Public Service Company; David Gilman, Attorney at Law; Christine Hayes Hickey, Partner at Rubin & Levin, P.C.; John Keeler, Attorney at Law; Phillip LaMere, Attorney at Bowman, Heintz, Boscia & Vician, P.C.; Nathaniel Lee, Partner at Lee & Fairman, LLP; Aida J. Ramirez, Law Clerk for the Hon. Louis F. Rosenberg, Judge, Circuit Court. The Court acknowledges with thanks the public service performed by this Committee. As a result of their scrutiny, these rules were substantially improved.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

#### **Rule LR49-SC00-103 Definitions**

Court. “Court” shall mean all of the Marion County Small Claims Courts, unless the context indicates otherwise.

Court website. “Court[’s] website” shall mean a website that contains Court information including a calendar and forms, with its URL location to be determined by March 01, 2013.

Judge. “Judge” means the sitting Judge or Judge *pro tempore* of a division of the Marion County Small Claims Court, unless the context indicates otherwise.

SCR. “SCR” shall mean Small Claims Rule of the State of Indiana.

Session. “Session” shall mean periods during which the Judge is scheduled to take the bench to transact the business of the court, in the morning between 9:00 A.M. and 12:00 P.M. and afternoon between 1:30 P.M. and 4:30 P.M.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

#### **Rule LR49-SC00-104 Court Hours**

The Court shall be open to accept pleadings and conduct any other business during “regular office hours” of 8:30 a.m. to 4:30 p.m. Monday through Friday of each week, except for holidays as recognized by the Circuit Court. For the convenience of the public, the Court may also arrange for sessions outside regular office hours.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

#### **Rule LR49-SC00-105 Court Sessions**

The Judge shall schedule as many sessions as necessary to transact the business of the Court in a reasonably prompt manner in compliance with these Rules. The Court shall post the Court calendar both in the Court and on the Court website.

*Adopted Oct. 15, 2012, effective July 1, 2013.*

### **200 COMMENCEMENT OF CASE**

#### **Rule LR49-SC02-201 Forms**

- A. For the purpose of this section, a “form” shall mean any standardized pleading or order or document approved for use in the Small Claims Courts by the Circuit Court.
- B. For the purpose of this section, a “required form” is a form which must be used by litigants and the Court.
- C. For the purpose of this section, a “suggested form” is a form which will be deemed acceptable by the Court but need not be used by litigants and the Court.

- D. Before a form is deemed required, it must be presented to the various Small Claims Courts and the State Court Administration for comment. When a proposed required form is for the use of litigants, the Circuit Court shall also solicit comment from bar associations and organizations described in LR49-SC00-202(B) before adopting the same.
- E. The Court shall maintain a supply of preprinted required forms. Required forms shall be posted on the Court website and the Indiana Judiciary website. The Court may charge a fee, not to exceed the cost to the Court, for providing a form subject to a waiver of such costs pursuant to LR49-SC00-202.
- F. The Court may, in its discretion, maintain a supply of suggested forms. Suggested forms shall be available at each Court in a binder for inspection and copying. Suggested forms shall be posted on the Court website and the Indiana Judiciary website.
- G. The Clerk shall assist unrepresented litigants in completing a form, but shall not provide advice as to the use or effect of the form.

Comment: The intent of LR49-SC02-201(G) is to encourage the provision of clerical assistance to unrepresented litigants in completing Court forms. It is not intended to encourage the provision of advice that could be considered the unauthorized practice of law. For instance, it is permissible to indicate that a form is asking for the facts of the case. It would not be permissible to suggest what facts should be included on the form or how those facts should be presented.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(34), p. 11; D(51)-(52), p. 13.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 3(a), p. 28; 4, p. 29.

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA III(B), p. 17.

*Adopted Oct. 15, 2012, effective July 1, 2013.*

**Rule LR49-SC00-202 Waiver of Filing Fees and Costs**

- A. Upon filing a Waiver of Filing Fee and Costs form and a showing of the present inability to pay the filing fee and costs, the Court may waive the filing fee and costs in full or in part.
- B. The Court may presume that an applicant is unable to pay the filing fee and costs if the applicant is represented by an attorney of an organization that uses generally accepted standards of poverty to determine eligibility for its services. Persons whose filing fees and costs have been waived are not required to pay Required Form fees as indicated in LR49-SC02-201(E).

Comment: For example, Indiana Legal Services uses objective financial criteria typically requiring eligible clients to have income at or below one hundred and twenty-five percent (125%) of the U.S. Census Poverty Guidelines.

Citation(s):

Ind. Code § 33-37-3-2

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT D(45), p. 12.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

### **Rule LR49-SC03-203 Timeliness of Service**

Service shall be effected no fewer than twenty (20) days before the initial hearing, except when possession of real estate is sought. When possession of real estate is sought, service shall be effected no fewer than ten (10) days before the initial hearing, except in those instances consistent with Ind. Code § 32-30-3-4 and § 32-31-6-7.

Comment: In emergency situations, the Court may reduce the Timeliness of Service requirement to a period of time less than ten (10) days. Consistent with Ind. Code § 32-31-6-7, failure to pay rent is not considered an emergency situation.

#### Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT G, p. 15 -16.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 1(b), p. 27.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

### **Rule LR49-SC03-204 Explanation of Service Options**

At the time of filing a claim, the Clerk shall explain to unrepresented litigants their options for serving the Notice of Claim and Summons. Should the litigant fail to designate a preference, service shall be by certified mail.

#### Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT G, p. 15 -16.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 1(b), p. 27.

INDIANA SMALL CLAIMS RULE 3(C).

*Adopted Oct. 15, 2012, effective March 1, 2013.*

## **300 MOTIONS**

### **Rule LR49-SC09-301 Continuances**

- A. Absent a Motion for Continuance, parties shall be ready for a trial on the merits at the initial hearing. Motions for Continuance of the initial hearing shall be granted liberally, except for hearings for possession of real estate. Motions for Continuance of the initial hearing joined by all parties shall be automatically granted. Motions for Continuance of hearings set after the initial hearing shall be granted only for good cause shown.
- B. If the parties at the initial hearing declare that they desire to proceed to trial, the Court shall try the case during that session, provided that the Court may continue the case due to congestion on the Court docket. The Court shall reserve a reasonable portion of the Court's docket for contested matters on any day during which it holds initial hearings.

- C. If a case is continued, the Court shall determine from the litigants the time needed for trial and the Court shall endeavor to schedule contested matters and keep its docket in such a manner as to avoid unnecessary delay and inconvenience to the parties.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(c), p. 27.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

**Rule LR49-SC12-302 Change of Venue from the Court**

In addition to a Motion to Correct Venue, as provided at SCR 12 either party may move for a change of venue from the Court, except in cases in which there is a claim between a landlord and tenant. The Court shall grant Motions for Change of Venue upon a showing of good cause. Motions for Change of Venue and Motions to Correct Venue shall be filed within ten (10) days of the service of the Notice of Claim or objections to venue will be deemed waived.

Comment: More than one Court may be considered proper venue. As a result, it may be appropriate to allow for a Motion for Change of Venue even though the Court granting the motion is considered a proper venue for the matter.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT E, p. 13 - 14.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

**Rule LR49-TP38-303 Jury Demand**

A demand for trial by jury must be filed with the Court no fewer than ten (10) days after the first setting of the initial hearing.

Comment: This Rule implements Ind. T. R. 38(B) which governs the timeliness of a Jury Demand. A jury must be demanded no later than ten (10) days after the deadline for filing a responsive pleading or in most cases about thirty (30) days after service. When as in Small Claims cases, no responsive pleading is required, the deadline for demanding a jury is “within ten (10) days after the time such pleading otherwise would have been required.”

The right to a jury trial in most civil cases is a right protected by both the Indiana and U.S. Constitutions. *Pro se* litigants in small claims cases may first become aware of this important right by receiving a pamphlet or talking with court staff at the initial hearing. Imposing a deadline of ten (10) days after service, as is required by Ind. Code § 33-29-2-7 for small claims courts which are a division of a Superior Court, would result in some defendants inadvertently losing this right before their initial hearing. This Court believes that LR49-TP38-303 is more consistent with Ind. T. R. 38(B) and the constitutional status of the right to a trial by jury.

*Adopted Oct. 15, 2012, effective March 1, 2013*

## 400 HEARING PROCEDURES

### Rule LR49-SC11-401 Non-Delegable Duties

The Judge shall review all tendered Judgments and Orders, but may delegate to Court staff related clerical functions not requiring the exercise of judicial discretion. In no event may any official duty of the Court be delegated to persons not sitting as *pro tempore* Judges or not employed as staff.

Comment: Court staff may only use a stamp bearing the Judge's signature when specifically directed to do so by the Judge. Standing policies regarding the use of such a stamp by Court staff other than the Judge are not permitted except regarding the use of the stamp for copies of Orders which bear the Judge's original signature.

#### Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(32)–(33), p. 11; C(35), p. 11.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(c)-(d), p. 27-28.

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA I(A), p. 6.

INDIANA SMALL CLAIMS RULE 11(A).

*Reynolds v. Capps*, 968 N.E.2d 789 (Ind. Ct. App. 2012).

*Adopted Oct. 15, 2012, effective March 1, 2013.*

### Rule LR49-SC00-402 Notice of Litigant's Rights

At the beginning of each session, the Court shall notify litigants of their rights as described in the Notice of Claim including but not limited to the following:

- A. Litigants are encouraged to settle their disputes;
- B. Litigants are also free to refuse to speak or provide information to the opposing party or its attorney;
- C. At the initial hearing, the Court will consider Motions to Continue the trial;
- D. When the session resumes, a litigant may speak with the Judge in open Court;
- E. If no Motions to Continue the trial are made, the case will be tried during the session, unless the Court's docket is congested, in which case the matter will be continued to a later date.

The above information will be included in a video provided by the Circuit Court which may be used instead of an oral notification. The video shall be subtitled in Spanish.

#### Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(34), p.11; C(40), p. 12; C(43), p. 12; D(44), p. 12; D(49), p. 13; D(53), p. 13.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(b), p. 27; 3(a), p. 28.

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA III(B), p. 17; III(C), p. 18.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

#### **Rule LR49-SC00-403 Access to Court Files**

Court files shall be under the control of the Court at all times. To facilitate trial preparation and/or negotiations, the Court may allow a party or its counsel to review or possess on the Court premises one or more files for a short period of time before and after the session and during the session. The opposing party shall have reasonable access to the file when in the possession of the other party.

#### Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(29) – (30), p. 10 - 11.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(f), p. 28.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

#### **Rule LR49-SC11-404 Agreed Judgments and Post-Judgment Payment Plans**

Agreed Judgments and payment plans shall be reviewed for approval by the Court. In determining whether to approve the proposed judgment or payment plan, the Court shall consider in addition to the requirements of SCR 11 whether the judgment requires payment from income or assets which would be exempt from execution and if so whether the Defendant was informed of such exemption rights before signing the agreement. A debtor's signature on a Court-prescribed Notice of Exemption Rights Form shall give rise to a rebuttable presumption that the debtor was informed of his/her exemption rights. The absence of the same shall give rise to a rebuttable presumption the debtor was not informed of his/her exemption rights.

Comment: This provision is consistent with *Branham v. Varble*, which indicates that it is appropriate for Judges in small claims proceedings to advise *pro se* litigants of their exemption rights, at least as it pertains to the general wage and SSI exemptions. *Branham v. Varble*, 952 N.E.2d 744, 748 (Ind. 2011).

#### Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(35) – (36), p. 11; E(61), p. 14.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(c), p. 27; 2(e), p. 28.

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA I(A), p. 6.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

#### **Rule LR49-SC00-405 Notice of Appeal Rights**

At the time that the Court announces its decision in a contested matter, the Court shall advise the losing party of his/her right to appeal. In the event that the Court enters judgment outside the presence of the parties, said advice shall be included in the Entry served on the parties.



*Adopted Oct. 15, 2012, effective March 1, 2013.*

### **Rule LR49-SC00-406 Bifurcation of Proceedings**

When a claim for possession of real or personal property is joined with a claim for damages, the Court may bifurcate the proceedings. The initial hearing may be restricted to the issue of whether the Plaintiff is entitled to possession, provided that the Defendant may introduce evidence in the form of testimony, affidavits or certified records or other reliable evidence constituting a defense under Indiana statutes or common law. All remaining issues, including damages, may be tried at a subsequent hearing.

Comment: The intent of this section is to give effect to Ind. Code § 32-30-3-5 as to the form of permissible evidence. *See Morton v. Ivacic*, 898 N.E.2d 1196, 1199 (Ind. 2008). It is also intended to recognize defenses in addition to a denial that the rent was not paid. *See Theis v. Heuer*, 264 Ind. 1, 280 N.E.2d 300 (Ind. 1972); *Barnes v. Mac Brown & Co., Inc.*, 264 Ind. 227, 342 N.E.2d 619 (Ind. 1976). Such defenses include, but are not limited to, constructive eviction, violations of warranties of habitability, and the Protecting Tenants at Foreclosure Act of 2009, 12 U.S.C. § 5220.

Citation(s):

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA II(B)(1), p. 12 - 13.  
Protecting Tenants at Foreclosure Act of 2009, 12 U.S.C. § 5220

*Adopted Oct. 15, 2012, effective March 1, 2013.*

### **500 DEFAULT JUDGMENTS**

#### **Rule LR49-SC03-501 Required Findings for Default Judgment**

Before entering a default judgment, the Court shall make the following specific findings:

- A. The Court has jurisdiction over the Defendant(s) and that the requirements of SCR 3(D) have been met.
- B. The Plaintiff has complied with Ind. Trial Rule 9.2.
- C. The Defendant(s) is not a member(s) of the United States Armed Forces in accordance with the Servicemembers Civil Relief Act.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 1(b), p. 27.  
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT G, p. 15 - 16.  
Servicemembers Civil Relief Act, 50 U.S.C. §§ 501 *et seq.*

*Adopted Oct. 15, 2012, effective March 1, 2013.*

#### **Rule LR49-SC10-502 Attorney's Fees**

No judgment shall include attorney's fees unless such fees are authorized by law or by contract between the parties. The party seeking attorney's fees shall support its request with evidence which may be in the

form of an affidavit setting forth the legal authority for the awarding of attorney's fees, the number of hours reasonably spent on the case and the hourly rate of those persons providing legal services.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

#### **Rule LR49-SC10- 503 Recoverable Damages**

A judgment may not exceed the relief specifically requested in the Notice of Claim, except that a Notice of Claim generally seeking unpaid rents for real estate shall be deemed to include a request for rents accruing after filing through the date of judgment. Furthermore, a landlord may seek damages to the extent that notice of such damages has been given to the tenant in compliance with Ind. Code § 32-31-3-1 *et seq.* no fewer than five (5) days before the hearing. The Court may allow an amendment of the Notice of Claim and/or a continuance to file the same at any time before the damages hearing, if it finds that the Defendant(s) have or will receive reasonable notice of said amendment before the damages hearing.

Comment: The problem addressed in this rule is that of a Defendant not being made aware of the full extent of the landlord's alleged damages. A catch phrase of "all other available relief" or "compensation for any waste committed on the premises" is insufficient to alert an unrepresented Defendant in a small claims setting. By incorporating the requirements of the Indiana Security Deposit Act, specific and timely notice of the landlord's claims will be assured.

#### Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT D(48), p. 12.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(h), p. 28.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

#### **Rule LR49-SC00-504 Dismissal of Plaintiff's Claim**

Upon the failure of a Plaintiff to appear at the initial hearing or at a trial on the merits, the cause may be dismissed without prejudice, provided that the dismissal may be with prejudice if the same cause of action was previously dismissed for failure to prosecute or was voluntarily dismissed by the Plaintiff. Further, default judgment may be entered in favor of Defendant on any counterclaim.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

### **600 POST JUDGMENT PROCEEDINGS**

#### **Rule LR49-SC00-601 Court's Jurisdiction Pending Docketing in a New Court**

Nothing in these rules shall be construed as divesting the Court of jurisdiction to hear matters arising between the date of filing of a Motion for Change of Venue or a Jury Demand or a Notice of Appeal and the date the case is docketed in the receiving Small Claims or Superior or Circuit Court.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

### **Rule LR49-SC00-602 Proceedings Supplemental**

- A. **General Procedure.** Proceedings supplemental to execution shall be governed by Ind. T. R. 69(E) and applicable statutes, and subject to the approval of the Court.
- B. **Thirty-Day Rule.** A Motion for Proceedings Supplemental shall not be set until thirty (30) calendar days after the date of judgment, except by order of the Court for good cause shown.
- C. **Hearings.** A Proceedings Supplemental shall be dismissed if the Court finds that the judgment creditor has had a reasonable opportunity to discover and/or execute on non-exempt assets or income. Except when the dismissal is due to the failure of the judgment debtor to appear at a Proceeding Supplemental hearing after due notice, subsequent Motions for Proceedings Supplemental shall only be granted upon a showing of a material change in the judgment debtor's financial circumstances or that a sufficient period of time has lapsed to justify a subsequent proceeding.

Comment: This provision is consistent with *Carter v. Grace Whitney Properties*, which holds that future proceedings supplemental “must be supported by a showing [by the creditor] that new facts justifying a new order or examination have come to its knowledge.” *Carter v. Grace Whitney Properties*, 939 N.E. 2d 630, 637 (Ind. App. 2010); *See also, Button v. James*, 909 N.E.2d 1007, 1009 (Ind. App. 2009); *Kirk v. Monroe County Tire*, 585 N.E.2d 1366, 1369 (Ind. Ct. App. 1992).

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(35)–(36), p. 11; E(61), p. 14.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(c), p. 27; 2(e), p. 28.

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA I(A), p. 6.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

### **Rule LR49-SC11-603 Garnishment of Wages**

The Court may set the amount of a wage garnishment at less than the maximum imposed by Ind. Code § 24-4.5-5-105, if it determines that Defendant will be deprived of income necessary for Defendant's support and/or the support of those legally dependent on the Defendant. The Defendant bears the burden of proving the above financial circumstances.

Comment: This provision is consistent with SCR 11(C), which authorizes the Court to specify the method of payment when ordering a judgment.

Citation(s):

Ind. Code § 24-4.5-5-105.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

### **Rule LR49-SC00-604 Appeals**

The provisions of LR49-TR79.1-228(C) of the Marion County Civil Rules shall govern all appeals from a Small Claims Court.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

## **700 MISCELLANEOUS**

### **Rule LR49-SC00-701 Staff Identification**

Court staff and the Constable and his/her deputies are to display identification by name and title at all times as prescribed by the Judge. When conducting Court business by phone, staff shall also identify themselves.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(31), p. 11.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 2(a), p. 27.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

### **Rule LR49-SC00-702 Court Facilities**

Court facilities shall be available on an equal basis to all persons having business with the Court, provided that the Court may reserve facilities for the purpose of conducting settlement conferences during Court sessions and for a reasonable period of time before and after each session. The Courtroom may be used for conferences, if other areas on the premises are unavailable or insufficient. If it is necessary to use the Courtroom, oral and/or written notice shall be given that the use of the Courtroom is not an endorsement or approval of the positions of any party and that the Court will independently review any agreement reached by the parties.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT C(30), p. 11.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

### **Rule LR49-SC00-703 Wedding Fees**

- A. The Judge may charge a reasonable fee for weddings. The fee for weddings performed on the Court premises or during the “regular office hours” of the Court shall be \$80.
- B. The fee shall be deposited in the Township General Fund when the Judge performs a wedding:
  1. on Court premises; or
  2. during “regular office hours” of the Court for a full-time Judge, pursuant to Rule LR49-SC00-104; or
  3. during a scheduled session for a part-time Judge, pursuant to Rule LR49-SC00-103 and 105.
- C. The Judge shall keep a record of each wedding performed and shall report annually to the Township Advisory Board the number of weddings performed on Court premises, during the “regular office hours” of the Court, or during a scheduled session.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT F(64) – (65), p. 15.  
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 9, p. 30.

Comment: Officiating at weddings is a minor activity in all of the Small Claims Courts, except in Center Township. Wedding fees have been a substantial source of personal income for Center Township judges since the inception of the Small Claims system more than forty (40) years ago. Moreover, Justices of the Peace performed weddings for a fee for many years before they were replaced by the current system. Changing views on the propriety of public officials accepting fees as compensation and increases in the revenue derived from wedding fees require a reevaluation of this practice. For these reasons, the Rule follows the Task Force recommendation and requires that wedding fees for weddings performed in the Court or on Court time be deposited in the Township General Fund.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

**Rule LR49-SC00-704 Law Practice of Judges**

A Judge shall not practice law before another Small Claims Court Judge.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT F(68) – (70), p. 15.  
REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 8, p. 30.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

**Rule LR49-SC00-705 Compliance with the Americans with Disabilities Act (“ADA”)**

The Court shall arrange for an evaluation of the compliance of Court facilities with the ADA. By April 1, 2013, the Court shall provide to the Township Advisory Board a copy of the evaluation and request the Board to correct violation(s).

Citation(s):

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA I(C), p. 6 - 7.  
Title VII Civil Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*

*Adopted Oct. 15, 2012, effective March 1, 2013.*

**Rule LR49-SC00-706 Availability of Rules and other Legal Reference Material**

- A. Sufficient copies of these Rules, the Indiana Small Claims Rules, the Small Claims Litigant’s Manual and the brochure entitled Rights and Responsibilities shall be available at the Court. The above materials shall be in English and Spanish. The Court may supplement the above materials as it sees fit.
- B. The Circuit Court shall be responsible for making the above materials available to locations other than the Small Claims Court. These locations include, but are not limited to, the Court’s website and Indianapolis Marion County Public Library branches.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 3(d), p. 28.

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA I(D), p. 8 - 7.

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA III(A), p. 16.

*Adopted Oct. 15, 2012, effective March 1, 2013.*

**Rule LR49-SC00-707 Availability of Interpreter Services**

Upon a showing that a party has limited English proficiency to understand and/or effectively participate in the proceedings, the Court shall provide a certified interpreter at no cost to the party. The Court shall provide an American Sign Language interpreter at no cost to parties with hearing disabilities.

Citation(s):

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, FINDINGS OF FACT D(46) – (48), p. 12.

REPORT ON THE MARION COUNTY SMALL CLAIMS COURT, PART C COMPLEMENTARY REFORM 3(d), p. 28.

REPORT #1 ON LANDLORD-TENANT COURT PROCEEDINGS IN INDIANA I(D), p. 8 - 7.

*Adopted Oct. 15, 2012, effective March 1, 2013.*