

LOCAL RULES
OF THE
ALLEN SUPERIOR SMALL CLAIMS COURT

Adopted Effective January 1, 1988

Including Amendments Received Through November 15, 2006
Including Amendments Through June 1, 2020

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LR02-SC01-201 Scope

- (A) **Scope.** These rules shall govern the practice and procedure for the Allen Superior Small Claims Court. These rules apply only to Small Claims (SC) cases. Protective Order cases that are assigned to the Allen Superior Small Claims Court are generally subject to the Indiana Rules of Trial Procedure, the Local Civil Rules of the Allen Superior and Circuit Courts, and such other rules promulgated by the Allen Superior Court for Protective Order cases.
- (B) **Citation.** These rules may be cited as Allen Superior Small Claims Rule _____ or A.S. Sm. Cl. R. _____. The small claims rules promulgated by the Indiana Supreme Court are hereinafter referred to as Ind. Small Claims Rule ___ or Ind. Sm. Cl. R _____. The Indiana Rules of Trial Procedure are hereinafter referred to as Ind. Trial Rule ___ or Ind. T.R. _____. The Local Civil Rules of the Allen Superior and Circuit Courts are hereinafter referred to as Allen County Local Civil Rule ___ or A.C.L. Civ. R. _____.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007; Amended effective June 1, 2020.

LR02-SC00-202 General Procedure

- (A) **Conflict of Rules.** All cases in the Allen Superior Small Claims Court shall be governed by the Small Claims Rules promulgated by the Indiana Supreme Court, and the Local Rules set forth herein. In instances where the Local Rules conflict with the Rules promulgated by the Indiana Supreme Court, the Supreme Court Rules shall control.
- (B) **Filing Documents**
1. **Parties Represented by Attorneys.** The filing of documents by an attorney shall be done pursuant to the provisions of Ind. Trial Rule 86, the Indiana Rules on Access to Court Records, and such other rules as promulgated by the Supreme Court.
 2. **Unrepresented Parties.** The filing of documents by an unrepresented party (also referred to as a self-represented party and pro se litigant) is not subject to the electronic filing requirements of Ind. Trial Rule 86. The filing of documents by an unrepresented party is subject to the requirements of the Indiana Rules on Access to Court Records, and such other rules as promulgated by the Supreme Court.
 3. **Confidential Information.** The filing of documents containing confidential information is subject to the requirements of the Indiana Rules on Access to Court Records, and such other rules as promulgated by the Supreme Court. Confidential information includes, but is not limited to, medical records, medical bills, complete social security numbers, and complete account numbers

for financial records such as bank accounts. Attorneys and unrepresented parties are required to file a Public Access Version and Non-Public Access Version of documents containing confidential information.

- (C) **Appearance by Spouse.** With the exception of Proceedings Supplemental and Contempt hearings or as otherwise ordered by the Court, when legally married spouses are co-plaintiffs or co-defendants in a case, the appearance of one (1) spouse at a hearing shall be considered and treated as if both spouses are present. The appearing spouse shall verify under oath that no divorce or legal separation case has been filed or is pending, and that the spouses are living together.
- (D) **Unrepresented Party's Current Addresses.** Notices and Orders from the Court are sent to an unrepresented party at the most recent address contained in the chronological case summary. An unrepresented party is solely responsible to keep their address updated in the chronological case summary for all cases in which they are a party.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007; Amended effective June 1, 2020.

LR02-SC00-203 Forms

- (A) **Court's Forms.** The Court in conjunction with the Clerk of the Circuit and Superior Courts has prepared forms for use by parties, the Clerk, and the Court. All parties shall use the forms as drafted. The use of a modified or altered form may result in the pleading or motion being struck from the record or denied. Copies of the forms as updated from time to time can be obtained at the Small Claims Court (1 West Superior Street, Fort Wayne, Indiana, 46802) and on-line at the Clerk's website (www.allencounty.us/).
- (B) **Signature Line.** All proposed orders and forms requiring the signature of a judicial officer shall have a signature line for "Magistrate Allen Superior Court".

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007; Amended effective June 1, 2020.

LR02-AR00-204 Hearing Calendars

- (A) **General Procedure.** Upon the filing of a Notice of Claim, the case may initially be scheduled on the claims calendar or the trial calendar. For purposes of caseload management, the Court may order that certain cases be initially scheduled on the claims calendar or trial calendar.
- (B) **Claims Calendar.** No trial will be held on a case scheduled on the claims calendar. A case scheduled on the claims calendar is for the purpose of determining whether the defendant contests the claim, and for the parties to attempt to resolve the case by settlement. If a defendant fails to appear

for a claims calendar hearing, a default judgment can be entered in favor of the plaintiff against the defendant. If the plaintiff fails to appear for a claims calendar hearing the case can be dismissed with or without prejudice.

- (C) **Trial Calendar.** If the Notice of Claim is set on the trial calendar, all parties shall be prepared for trial and presentation of evidence at that hearing. The parties are responsible for requesting the appropriate amount of time for the trial.
- (D) **Change of Calendar.** A party may request that a case which is initially scheduled on the claims calendar be transferred to the trial calendar.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007; Amended effective June 1, 2020.

LR02-TR4-205 Service of Claims and Counterclaims

- (A) **Notice of Claim.** A defendant shall be served with a Notice of Claim consistent with the provisions of Ind. Trial Rule 4.1 through Ind. Trial Rule 4.17, at least ten (10) days prior to the scheduled hearing on the claims calendar, and twenty (20) days prior to the scheduled hearing on the trial calendar.
- (B) **Notice of Counterclaim.** A plaintiff shall be served with a Notice of Counterclaim consistent with the provisions of Ind. Trial Rule 5, at least twenty (20) days prior to the scheduled hearing on the claims calendar or trial calendar.
- (C) **Petition for Emergency Possessory Order.** A Notice of Claim and Verified Petition for Emergency Possessory Order may be served on a defendant fewer than twenty (20) days before the emergency possession hearing. Service of the Notice of Claim and Verified Petition for Emergency Possessory Order shall be done consistent with the provisions of Ind. Trial Rule 4.1 through Ind. Trial Rule 4.17.
- (D) **Failure to Timely Serve a Notice of Claim or Notice of Counterclaim.**
 - 1. A party is entitled to a continuance of a trial if they have not been timely served with a Notice of Claim or Notice of Counterclaim.
 - 2. No default judgment shall be granted on a claim if the defendant has not been timely served with the Notice of Claim.
 - 3. No default judgment shall be granted on a counterclaim if the plaintiff has not been timely served with the Notice of Counterclaim.

Adopted effective June 1, 2020.

LR02-SC12.1-206 Change of Magistrate

Change of Magistrate. A plaintiff may file a Motion for Change of Magistrate within ten (10) days from the date the case is entered on the

chronological case summary as having been filed. A defendant shall have ten (10) days from the date of service of the Notice of Claim to file a Motion for Change of Magistrate. A timely filed Motion for Change of Magistrate shall be granted as a matter of right. After the granting of a Motion for Change of Magistrate all future proceedings on the case shall be conducted by one of the other Magistrates in the Small Claims Court or any Judicial Officer serving on a temporary basis in the Small Claims Court. A party is limited to one change of Magistrate per case.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007; Amended effective June 1, 2020.

LR02-SC5-207 Counterclaims Outside Small Claims Court Jurisdiction

- (A) **Counterclaims in Excess of the Court's Monetary Jurisdiction.** A defendant who has a counterclaim in excess of the monetary jurisdiction of the Small Claims Court and does not wish to waive the excess amount of the counterclaim, must file the counterclaim in a timely fashion as a separate case on the plenary docket of the Allen Superior Court Civil Division, or in any other Court of competent jurisdiction. Either party may then file a motion for consolidation pursuant to Ind. Trial Rule 21(B) and Allen County Local Civil Rule LR02-TR42-25 in both pending cases.
- (B) **Counterclaims Outside the Court's Subject Matter Jurisdiction.** A defendant who has a counterclaim outside the subject matter jurisdiction of the Small Claims Court must file the counterclaim in a timely fashion as a separate action on the plenary docket of the Allen Superior Court Civil Division, or in any other Court of competent jurisdiction. Either party may then file a motion for consolidation pursuant to Ind. Trial Rule 21(B) and Allen County Local Civil Rule LR02-TR42-25 in both pending cases.

Adopted effective Jan. 1, 1988; Amended effective June 1, 2020.

LR2-TR53.5-208 Continuances

- (A) **General Rule.** Except as provided in paragraphs (B) and (D) below, each party to a case may be granted one (1) continuance as a matter of right without showing good cause. However, a continuance under this subsection shall not be granted within seven (7) days of the hearing or trial, unless approved by a Judicial Officer. All motions for continuance must be made in writing with service to all other parties. The party obtaining a continuance shall notify all other parties to the case in a timely fashion that the matter has been continued, and of the new date and time for the hearing or trial. On a showing of good cause the Court may grant an oral motion for continuance at the beginning of a hearing or trial.
- (B) **Possession of Real Estate or Personal Property.** Except on good cause shown and approval by a Judicial Officer, no continuance of a

hearing or trial will be granted to a defendant where the case involves possession of real estate or personal property.

- (C) **Agreed Continuance.** Any hearing or trial may be continued by agreement of the parties.
- (D) **Proceedings Supplemental.** Except on good cause shown and approval by a Judicial Officer, no motion for continuance of a proceedings supplemental will be granted. The parties by agreement may continue a proceedings supplemental.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007; Amended effective June 1, 2020.

LR02-TR41-209 Dismissal of Case

- (A) **Dismissal by Plaintiff.** A case may be dismissed by the plaintiff at any time prior to the filing of a counterclaim, answer, motion for summary judgment, or other dispositive motion by the defendant.
- (B) **Dismissal by Stipulation.** A case may be dismissed by filing a stipulation of dismissal signed by all parties.
- (C) **Failure to Prosecute or Failure to Comply with Rule or Order.** Consistent with Ind. Trial Rule 41(E), the Court on its own motion may set a hearing for the purpose of dismissing a case if there has been no action on the case for a period of more than sixty (60) days, or if a party has failed to comply with a rule or order.
- (D) **Failure to Appear.** If the plaintiff on a claim or the defendant on a counterclaim fails to appear within the allotted time (grace period) for a hearing on the claims calendar or for the trial, then the claim or counterclaim shall be dismissed without prejudice. The claim or counterclaim may be dismissed with prejudice upon a showing of good cause such as a prior failure to appear for a hearing on the claims calendar or for a trial.

Adopted effective Jan. 1, 1988; Amended effective June 1, 2020.

LR02-TR60-210 Default

- (A) **Grace Period.** All parties are granted a fifteen (15) minute grace period to appear for a hearing or trial. The failure of a party to appear within the grace period may result in the entry of a default judgment, dismissal of claim, granting or denying of a pending motion, dismissal of a proceedings supplemental, the entry of a garnishment order, or other sanctions, including the issuance of a body attachment.
- (B) **Claim.** If a defendant fails to appear within the allotted time for a hearing on the claims calendar or for a trial, then the plaintiff may be entitled to a default judgment on the claim. Before a default judgment is granted, the record must reflect proof of service of the Notice of Claim, and the plaintiff

must file an Affidavit for Judgment by Default along with any other supporting documentation as required by the Court.

- (C) **Counterclaim.** If a plaintiff fails to appear within the allotted time for a hearing on the claims calendar or for a trial then the defendant may be entitled to a default judgment on the counterclaim. Before the default judgment is granted, the record must reflect proof of service of the Notice of Counterclaim, and the defendant must file an Affidavit for Judgment by Default along with any other supporting documentation required by the Court.
- (D) **Motion to Set Aside Default Judgment.** A default judgment may be set aside according to the provisions of Ind. Small Claims Rule 10(C) and Ind. Trial Rule 60(B).
 - (1) An expedited hearing on a motion to set aside default judgment will be set on the trial calendar.
 - (2) In any case in which a motion to set aside default judgment has been filed, collection proceedings will not be stayed unless a motion to stay is filed and granted pursuant to Ind. Trial Rule 62(B).
- (E) **Default on Proceedings Supplemental.** Each party is granted a fifteen (15) minute grace period to appear for any proceedings supplemental. The grace period shall begin at the time scheduled for the proceedings supplemental. After the fifteen (15) minute grace period has elapsed the following rules shall apply:
 - (1) If the judgment debtor has failed to appear, the judgment creditor may file a motion for sanctions against the judgment debtor.
 - (2) If the judgment creditor has failed to appear or call the judgment debtor's case for the proceedings supplemental within the grace period, then the judgment debtor may leave the proceedings supplemental and shall not be subject to sanctions for failing to appear. The grace period for this purpose shall begin at the time scheduled for the proceedings supplemental or at the time the judgment debtor registers with the Small Claims Court receptionist, whichever is later. Prior to leaving court, the judgment debtor shall notify the Small Claims Court receptionist that the grace period has expired and that the judgment debtor is leaving.
 - (3) The failure of a judgment creditor to commence the proceedings supplemental within the fifteen (15) minute grace period does not prevent the judgment creditor from filing for a garnishment order against the judgment debtor's

wages or bank accounts if the requirements of LR02-TR-217 have been satisfied.

- (F) **Default on Rule To Show Cause (Contempt).** Each party is granted a fifteen (15) minute grace period to appear for any contempt. The grace period shall begin at the time scheduled for the contempt. After the fifteen (15) minute grace period has elapsed the following rules shall apply:
1. If the judgment debtor has failed to appear the judgment creditor may file a motion for sanctions against the judgment debtor.
 2. If the judgment creditor has failed to appear or call the judgment debtor's case for the contempt within the grace period, the judgment debtor may leave and shall not be subject to sanctions for failing to appear. The grace period for this purpose shall begin at the time scheduled for the contempt or at the time the judgment debtor registers with the Small Claims Court receptionist, whichever is later. Prior to leaving court, the judgment debtor shall notify the Small Claims Court receptionist that the grace period has expired and that the judgment debtor is leaving.
 3. The failure of a judgment creditor to commence the contempt within the fifteen (15) minute grace period does not prevent the judgment creditor from filing for a garnishment order against the judgment debtor's wages or bank accounts if the requirements of LR02-TR 64-217 have been satisfied.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007; Amended effective June 1, 2020.

LR-02-SC10-211 Default Judgment

- (A) **General Requirements.** The following documents or information shall generally be a part of the chronological case summary at the time that a request for default judgment is filed. The documents or information may be filed prior to the request for default judgment, or as part of the Affidavit for Judgment by Default:
1. Proof of service of the Notice of Claim or Notice of Counterclaim in compliance with LR02-TR4-205.
 2. Affidavit of Non-Military Service including the Servicemembers Civil Relief Act Status Report from the Department of Defense.
 3. If the claim includes prejudgment interest, a written calculation of the amount of interest. The calculation shall include the time period and interest rate. If the interest rate is higher than the statutory rate for prejudgment interest, documentation shall be included that supports the use of a higher interest rate.

4. If the claim includes attorney fees, an attorney fee affidavit shall be filed along with documentation or legal authority (statute or case law) to support an award of attorney fees.
5. An Affidavit of Debt in a form that complies with the requirements of Ind. Small Claims Rule 2(B)(4)(b)(Appendix A). If the plaintiff is not the original creditor, then the Affidavit of Debt shall include additional information required by Ind. Small Claims Rule 2(B)(4)(c).
6. Any agreement, contract, lease, invoice, receipt, bill or other written documentation that serves as a basis for the claim.
7. Copies of all assignments/transfers of the debt.
8. A proposed order for default judgment in a form approved by the Court.

(B) **Accounts.** In cases involving accounts, the following additional documentation or information shall be a part of the chronological case summary at the time that a request for default judgment is filed:

1. An Affidavit of Debt in a form that complies with the requirements of Ind. Small Claims Rule 2(B)(4)(b).
2. If the plaintiff is not the original creditor, then the Affidavit of Debt shall include the additional information required by Ind. Small Claims Rule 2(B)(4)(c).
3. If the plaintiff is not the original creditor, then a sworn statement by plaintiff or plaintiff's attorney that the statute of limitations on the claim has not expired.
4. Any agreement, contract, lease, invoice, receipt, bill or other written document that serves as a basis for the claim.

(C) **Medical Bills.** In cases involving medical bills, the following additional documentation or information shall be a part of the chronological case summary at the time that a request for default judgment is filed:

1. An account statement or other documentation from the medical provider which includes:
 - a. The name of the medical provider, and name of the patient or responsible party.

- b. The unpaid account balance.
 - c. The account number consistent with the requirements of Indiana Access to Court Records Rule 5.
 - d. A detailed summary of the dates of service, charges for medical care and treatment, payments received by the medical provider, and any write-offs on the account.
- (D) **Credit Cards.** In cases involving credit cards, the following additional documentation or information shall be a part of the chronological case summary at the time that a request for default judgment is filed:
- 1. The name of the original credit card company.
 - 2. The unpaid account balance and charge off date.
 - 3. Date and amount of the last payment.
 - 4. The account number consistent with the requirements of Indiana Access to Court Records Rule 5.
 - 5. Date the defendant defaulted on the account.
 - 6. Interest rates(s) for the account.
 - 7. Summary of fees assessed to the account, including but not limited to late fees and over limit fees.
 - 8. Monthly billing statement for the last payment or last purchase, whichever is later. The statement should include the following information:
 - a. Defendant's name and address.
 - b. Date of last payment or purchase.
 - c. Interest rate and any fees.
 - 9. An itemized statement for the amount requested as a judgment. The itemization shall include the amount charged to the account by the debtor, interest, and fees.
 - 10. If the plaintiff is not the original creditor, then a sworn statement by plaintiff or plaintiff's attorney that the statute of limitations on the claim has not expired.

(E) **Landlord/Tenant Cases.** In cases involving unpaid rent and/or damages to rental property, the following additional documentation or information shall be a part of the chronological case summary at the time that a request for default judgment is filed:

1. Lease agreement.
2. Ledger or other summary of charges and payments.
3. Itemization of unpaid rent, late fees, and other damages.
4. A copy of the written notice to the defendant regarding disposition of the security deposit and itemization of damages.

(F) **Installment Loan Contract/Repossession.** In cases involving installment loan contracts or repossession, the following additional documentation or information shall be a part of the chronological case summary at the time that a request for default judgment is filed:

1. A copy of the original contract with the defendant's signature.
2. An itemization of all amounts paid on the contract by the defendant.
3. If the personal property was repossessed:
 - a. The date of repossession.
 - b. The current location of the property.
4. If the personal property has been sold:
 - a. The date and location of the sale.
 - b. The gross amount of the sale proceeds.
 - c. An itemization of all deductions/charges from the gross sale proceeds.
 - d. The amount of the gross sale proceeds applied to the account balance.
5. Copies of all notices to the defendant regarding repossession and/or sale of the vehicle.

- (G) **Motor Vehicle Collision Cases.** In cases involving property damage or personal injury arising out of a motor vehicle collision, the following additional documentation or information shall be a part of the chronological case summary at the time that a request for default judgment is filed:
1. Any accident report by a law enforcement agency.
 2. Medical bills for treatment of injuries consistent with Indiana Access to Court Records Rule 5.
 3. An itemization of any claim for lost wages with supporting documentation.
 4. An itemization of all claimed damages.
 5. If the defendant was not the operator of the motor vehicle, documentation and legal authority to support a claim against that person.
- (H) **Unavailable Information or Documentation.** If any of the information or documentation required by LR-02-SC10-211(A) through LR-02-SC-10-211(G) is unavailable, the party requesting a default judgment shall file an affidavit that identifies the unavailable information or documentation and states why the information or documentation is unavailable.

Adopted effective June 1, 2020.

LR02-TR00- 212 Attorney Fees

In General. Attorney fees may be awarded in a case if there is a written agreement for payment of attorney fees, or if based on legal authority such as a statute or case law. The amount of an attorney fee award shall be subject to the sound discretion of the Court. A request for an award of attorney fees at trial or as part of a default judgment shall include evidence as to the amount of the fees. Evidence of the amount of attorney fees shall either be in the form of an affidavit signed by the attorney, or testimony by the attorney under oath.

Adopted effective Jan. 1, 1988; Amended effective June 1, 2020.

LR02-SC16-213 Possession of Real Estate and Personal Property

- (A) **Bifurcated Hearing.** Hearings in cases involving possession of real estate or personal property shall be bifurcated. The initial hearing for possession shall be set on the trial calendar, or on the claims calendar with prior Court authorization. A judgment regarding possession of real

estate or personal property will be entered at the initial hearing. A separate damages hearing shall be scheduled for unpaid rent, property damage/repairs, cleaning expenses, and missing property. Any filed counterclaim for damages or refund of the security deposit shall be scheduled for hearing at the same time.

- (B) **Lease and Notices.** Any written lease agreement for the real estate with the defendant, including extensions, modifications, amendments, or addendums shall be filed by the plaintiff with the Notice of Claim, along with any written notices of default that were sent to the defendant.
- (C) **Verification of Ownership of Real Estate.** The plaintiff in a case for possession of real estate shall file a Verification of Ownership with the Notice of Claim. The Verification of Ownership shall be on a form approved by the Court (Appendix B). The verification shall accurately identify the owner(s) of the real estate. If the owner of the real estate is a limited liability company (LLC) or similar entity, the verification shall include the name of the entity along with the name of the majority owner/shareholder of the entity.
- (D) **Property Manager.** If the named plaintiff in a case for possession of real estate and/or damages is not the owner of the real estate, then the plaintiff shall be represented by an attorney.
- (E) **Designated Employee.** If the named plaintiff in a case for possession of real estate is the owner of the real estate, then the plaintiff may be represented by a designated employee consistent with Ind. Small Claims Rule 8(C). A designated employee must be a full-time employee of the plaintiff and not a part-time employee, independent contractor, or agent. If the named plaintiff is a corporation, limited liability company (LLC), or limited liability partnership (LLP), then an individual with an ownership interest in the entity may serve as a designated employee.
- (F) **Contract for Conditional Sale of Real Estate (Land Contract).**
 - 1. If a plaintiff is requesting an order of possession with respect to real estate that is being purchased pursuant to a land contract, the Notice of Claim must clearly state that the real estate is subject to a land contract, and a copy of the contract shall be filed with the Notice of Claim.
 - 2. At the possession hearing the plaintiff has the burden of proving that the defendant has breached the land contract, and that forfeiture is an appropriate remedy.
- (G) **Writ of Restitution (Assistance).** A party that is granted an order for possession of real estate or personal property may request a Writ of

Restitution (Assistance) for the Sheriff to assist in obtaining physical possession of the real estate or property.

1. Unless otherwise authorized by the Court, a Writ of Restitution (Assistance) shall not be issued until seven (7) days after the order of possession is granted.
2. All orders for possession of real estate and personal property shall expire thirty (30) days after the entry of the order.

(H) **Disposition of Personal Property.** If a tenant leaves personal property of value at a rental property after being evicted or otherwise vacating the rental property, then the landlord may dispose of the personal property in the following manner:

1. Using reasonable care the landlord may remove and store the personal property in a safe and secure location.
2. The landlord shall notify the tenant by first class mail to tenant's last known address that the personal property is being stored and will be available to the tenant for a period of fourteen (14) days from the date of the notice. The landlord shall cooperate with the tenant in making arrangements for the tenant to retrieve the personal property.
3. If the tenant has not retrieved the personal property after the fourteen (14) day period, the property shall be deemed abandoned, and the landlord may dispose of the property in a reasonable manner. This includes destroying the property having little or no value, selling the property or donating the property to a charitable organization. Proceeds from sale of the personal property shall be applied to any unpaid rent or other damages owed by the tenant to the landlord.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007; Amended effective June 1, 2020.

LR02-SC11-214 Release of Judgment

- (A) **Process and Procedures.** The process and procedures for release of a judgment shall be pursuant to the provisions of Ind. Small Claims Rule 11(D).
- (B) **Evidence.** Records of the Clerk of the Circuit and Superior Courts are prima facie evidence regarding payment in full of a judgment, including accrued interest and court costs.
- (C) **Interest Calculation.** The date that a payment is entered as received by the Clerk of the Circuit and Superior Courts shall be the date of receipt for purposes of calculating post-judgment interest.

- (D) **Objection to Release of Judgment.** The Court may schedule a hearing on a verified objection to release of judgment filed by a judgment creditor, if the verified objection is filed within the (thirty) 30 day time period as set out in Ind. Small Claims Rule 11(D).

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Amended effective June 1, 2020.*

LR02-TR69-215 Proceedings Supplemental

- (A) **General Procedure.** Proceedings supplemental to execution shall be governed by Ind. Trial Rule 69 and applicable statutes.
- (B) **Ten Day Rule.** A motion for proceedings supplemental may not be filed until ten (10) calendar days have elapsed since the date of judgment except by order of the Court.
- (C) **Six Month Rule.** Except by order of the Court, no proceedings supplemental may pend for more than six (6) months from the date of its filing. At the end of the six (6) month period, any pending proceedings supplemental shall be dismissed. Except by prior order of the Court, no judgment creditor may file more than four (4) proceedings supplemental per calendar year against a judgment debtor in a given case.
- (D) **Scheduling.** All proceedings supplemental shall be scheduled on the claims calendar, unless the judgment creditor specifically requests that the proceedings supplemental be scheduled on the trial calendar at the time of filing. The judgment debtor shall be served with the proceedings supplemental and order to appear at least 20 days prior to the scheduled date for the proceedings supplemental.
- (E) **Conduct of Proceedings Supplemental.** A judgment debtor or judgment creditor may request that the proceedings supplemental be conducted before a Magistrate.
- (F) **Proceedings Supplemental Report.** Following a proceedings supplemental, the judgment creditor shall file a chronological case summary entry form notifying the Court regarding the results of the proceedings supplemental. The report shall be filed no later than one (1) business day after the proceedings supplemental.
- (G) **Bank Interrogatories.** Except by order of the Court, a judgment creditor may not submit garnishment interrogatories to more than two (2) banking institutions for a proceedings supplemental.
- (H) **Proceedings Supplemental During Pendency of Garnishment Order.** If a garnishment order has been issued and the judgment remains unsatisfied, an additional proceedings supplemental directed to the

judgment debtor or to another garnishee defendant may only be filed by order of the Court.

- (l) **Agreements to Appear.** In any proceedings supplemental the parties may agree to reset the proceedings supplemental without a court order to appear. If either party fails to appear at the reset proceedings supplemental, the proceedings supplemental shall be dismissed and no sanctions shall be issued against either party for the failure to appear.

Adopted effective Jan. 1, 1988; Amended effective June 1, 2020.

LR02-TR64- 216 Contempt/Rule to Show Cause/Body Attachment

- (A) **Contempt.** When a judgment, debtor or garnishee defendant fails to appear, as ordered for a proceedings supplemental or other hearing, the judgment creditor may file a Motion for Rule to Show Cause (Contempt) as to the party that failed to appear as ordered. The Motion for Rule to Show Cause must be filed within thirty (30) days of the party's failure to appear for the proceedings supplemental or other hearing.
- (B) **Body Attachment.** A body attachment may be requested and issued only when:
1. The judgment debtor or garnishee defendant was personally served with notice of the contempt hearing. Personal service for purposes of this rule includes delivery of the notice of hearing to the judgment debtor or garnishee defendant in person by a sheriff or private process server, or certified mail delivery signed by the judgment debtor or garnishee defendant.
 2. Proof of service has been filed in the chronological case summary that the judgment debtor or garnishee defendant was personally served with notice of the contempt hearing.
 3. The judgment debtor or garnishee defendant fails to appear at the contempt hearing.
 4. A request for body attachment is filed within thirty (30) days after the scheduled contempt hearing.
 5. The judgment creditor properly completes and files all pleadings and forms required by the Court. The pleadings and forms include for each judgment debtor or garnishee defendant:
 - (a) One (1) Request for Body Attachment.
 - (b) One (1) Writ of Attachment which must include a statement setting a bond for release. The bond amount shall be set at the lesser of \$500.00 or the total amount remaining unpaid on the judgment, including costs and interest.

- (c) A Warrant Information Card, including the judgment debtor's or garnishee defendant's social security number and/or date of birth.

(C) **Procedure When Judgment Debtor/Garnishee Defendant is in Custody.**

1. If a judgment debtor or garnishee defendant is in the custody of the Allen County Sheriff pursuant to a body attachment, then a hearing shall be held within forty-eight (48) hours, excluding weekends and holidays, following the person being taken into custody. Normally the hearing will be held at the Allen County Jail at 3:00 P.M.
2. Notice of the hearing will be given to the judgment creditor by telephone at the phone number listed for the judgment creditor in the chronological case summary.
3. If the judgment debtor or garnishee defendant is released from detention on a bond, the judgment creditor, judgment debtor, garnishee defendant, or third party may file a request for hearing to determine disposition of the bond proceeds.

(D) **Procedure When Judgment Debtor/Garnishee Defendant Appears in Court.** When the Court is notified that a judgment debtor or garnishee defendant with a pending body attachment has appeared prior to being taken into custody, the Court will notify the judgment creditor of the appearance of the judgment debtor or garnishee defendant by telephone at the phone number listed for the judgment creditor in the chronological case summary. If the judgment creditor does not appear within one (1) hour of having been called by the Court, the body attachment shall be recalled, the judgment debtor or garnishee defendant shall be released, and the pending proceedings supplemental shall be dismissed.

(E) **Expiration and Recall of Body Attachments.**

1. A body attachment expires one (1) year from the date of issuance.
2. If a judgment creditor intends to file a proceedings supplemental while a body attachment is active, the judgment creditor shall first file a motion for recall of the body attachment.
3. At any time while a body attachment is active a judgment creditor, judgment debtor, or third party may file a motion for recall of the body attachment.

Amended effective June 1, 2020.

LR02-TR69- 217 Garnishment Orders

- (A) **General Procedure.** All garnishment proceedings shall comply with Ind. Trial Rules 64 and 69 and applicable statutes.
- (B) **Requirements for Garnishment Order to Issue.** A garnishment order shall not issue with respect to a judgment debtor's wages or other property without:
1. An active proceedings supplemental as to the judgment debtor or waiver of notice by the judgment debtor.
 2. Proof of service on the garnishee defendant of the proceedings supplemental or interrogatories by certified mail, sheriff's service, or private process server.
 3. Verification of the judgment debtor's employment by answered interrogatories or other credible evidence, or the failure of the garnishee defendant to answer interrogatories regarding the judgment debtor's employment.
 4. Verification of the judgment debtor's ownership interest in a bank account by answered interrogatories or other credible evidence, or the failure of the garnishee defendant to answer interrogatories regarding the judgment debtor's bank account.
- (C) **Voluntary Garnishments.** When a judgment debtor has entered into an agreement with the judgment creditor on a payment plan to satisfy the judgment and further agrees to the issuance of a garnishment order upon default, no garnishment order shall issue unless the following conditions are satisfied:
1. There is an active proceedings supplemental pending against the judgment debtor and the garnishee defendant.
 2. A motion is filed by the judgment creditor requesting the issuance of a garnishment order. A copy of the agreement shall be attached to the motion.
- (D) **Stay.** If a garnishment order is stayed at the request of the judgment creditor or as a result of a bankruptcy, then the judgment creditor shall file a Motion to Lift Stay before the garnishment order can be reactivated.
- (E) **Release.** Upon receipt by the judgment creditor or by the Clerk of the Circuit and Superior Courts, on the judgment creditor's behalf, of funds sufficient to satisfy the judgment, accrued interest, and costs, the

judgment creditor shall immediately file a motion for release of the garnishment order and shall serve the garnishee defendant with a copy of the motion.

- (F) **Issuance of Garnishment Order After Proceedings Supplemental Hearing.** When a garnishment order is issued by the Court, the underlying proceedings supplemental shall be dismissed.
- (G) **Issuance of Garnishment Order Prior to Rule to Show Cause Hearing.** When a garnishment order is issued prior to a hearing on a Motion for Rule to Show Cause, any scheduled hearing on the Motion shall be cancelled and the Motion for Rule to Show Cause shall be dismissed.
- (H) **Exemption Hearings.**
1. The Court will schedule an expedited hearing on a request by the judgment debtor or third party to exempt funds in a bank account from garnishment. The judgment debtor or third party shall bring to the hearing the last three (3) bank statements for the account and any documentation which demonstrates the source of funds in the account such as pay stubs or social security records.
 2. If a hearing is scheduled when the judgment debtor requests an exemption to modify the garnishment of wages, the judgment debtor shall bring to the hearing their three (3) most recent pay stubs, a family budget showing income and expenses for the household, and such other information as requested by the Court.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007; Amended effective June 1, 2020.

LR02-TR64-218 Post Judgment Writs and Orders

- (A) **Writs.** Any request for a writ to satisfy a money judgment shall be scheduled for a hearing.
- (B) **Order.** Any request for an order directing a judgment debtor to directly pay funds to the Clerk of the Circuit and Superior Courts in satisfaction of a judgment shall be scheduled for hearing.

Adopted effective June 1, 2020.

LR02-SC00-219 Bankruptcy

- (A) **Stay of Proceedings.** Upon receiving notification that a judgment debtor has filed bankruptcy, the Court will issue an order to stay all proceedings in the case with respect to the judgment debtor.
- (B) **Further Proceedings.** If the bankruptcy is dismissed or a discharge is not granted, then the judgment creditor shall file a Motion to Lift Stay of Proceedings before taking any other action in the case against the judgment debtor. The motion shall include a copy of the dismissal from the bankruptcy court.

Amended effective June 1, 2020.

LR02-SC06-220 Discovery.

A party that intends to conduct discovery pursuant to Ind. Small Claims Rule 6 shall file a motion for approval of discovery. The proposed discovery request shall be filed with the motion for review by the Court. Copies of the motion and proposed discovery request shall be served to all parties consistent with Ind. Trial Rule 5. The time period for responding to the discovery request shall not commence until such time as the Court approves the discovery request, in whole or in part.

Adopted effective June 1, 2020.

APPENDIX A

AFFIDAVIT OF DEBT (SMALL CLAIMS)

Comes now affiant, and states:

I _____ am Plaintiff
(Name of Affiant) OR

a designated full-time employee of _____ (Plaintiff).
(Name of Plaintiff)

I am of adult age and am fully authorized by Plaintiff to make the following representations. I am familiar with the record keeping practices of Plaintiff. The following representations are true according to documents kept in the normal course of Plaintiff's business and/or my personal knowledge:

Plaintiff:

is the original owner of this debt, and evidence of the debt, as required in Rules 2(B)(4)(a) and (b) is attached as one or more Exhibits to this Affidavit.

OR

has obtained this debt from _____ and the original owner of this debt was _____. Evidence of the debt, as required in Rule 2(B)(4)(c) is attached as one or more Exhibits to this Affidavit.

_____, Defendant, has an unpaid balance of \$_____ on account _____.
(Name of Defendant) (last 4 digits of number or id only)

That amount is due and owing to Plaintiff. This account was opened on _____. The last payment from Defendant was received on _____ in the amount of \$_____.

The type of account is:

Credit card account (i.e. Visa, Mastercard, Department Store, etc.)

List the name of the Company/Store issuing credit card: _____

Account for utilities (i.e. telephone, electric, sewer, etc.)

Medical bill account (i.e. doctor, dentist, hospital, etc.)

Account for services (i.e. attorney fees, mechanic fees, etc.)

Judgment issued by a court (a copy of the judgment is required to be attached)

Other: (Please explain) _____

This account balance includes:

Late fees in the amount of \$_____ as of _____.
(Month, Day, Year)

Other (Explain _____)

Interest at a rate of _____% beginning on _____.
(Month, Day, Year)

Plaintiff:

is seeking attorney's fees and additional evidence will be presented to the court prior to entry of judgment on attorney's fees.

OR

is not seeking attorney's fees.

Plaintiff believes that Defendant is not a minor or an incompetent individual.

If the defendant is an individual, Plaintiff states and declares that:

Defendant is not on active military service. Plaintiff's statement that Defendant is not on active military service is based upon the following facts:

OR

Plaintiff is unable to determine whether or not Defendant is not on active military service.

("Active military service" includes fulltime duty in the military (including the National Guard and reserves) and, for members of the National Guard, service under a call to active service authorized by the President or Secretary of Defense. For further information, see the definition of "military service" in the Servicemembers Civil Relief Act, as amended, 50 U.S.C.A. Appx. § 521.)

I swear or affirm under the penalties of perjury that the foregoing representations are true.

Dated: _____ Signature of Affiant: _____

Adopted effective June 1, 2020

APPENDIX B

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

CASE NUMBER:

Plaintiff(s)

vs.

Defendant(s)

VERIFICATION OF OWNERSHIP

The real estate commonly known as

(Address)

which is the subject matter of this case is legally owned and titled in the name of

(Name)

I affirm, under the penalties for perjury, that the foregoing representation is true.

Date

Signature

Printed

Certificate of Service

I hereby certify that a copy of this document was sent to the parties or their counsel by _____ (US Mail, E-Service, Sheriff, other manner allowed by IN Trial Rules).

Date

Name

Adopted effective June 1, 2020