

## LITIGANTS MANUAL

### FOR USE IN THE MARION COUNTY SMALL CLAIMS COURTS

The Indiana General Assembly created the Marion County Small Claims Courts and provided that litigants may try their cases in such courts under simplified rules of procedure. Also, the Indiana Supreme Court has established general rules of procedure for all Indiana courts, including all small claims courts.

The Marion County Small Claims Courts are based on township divisions, and the judges are elected by the citizens of the township in which they serve.

This manual contains important information about the operations of the Marion County Small Claims Courts. Please read it very carefully. The court has a number of prepared forms designed for use by litigants. Make sure you check with the court staff to see if a form is available to meet your needs. The court staff will try to answer any questions you might have after you have read this manual. However, please keep in mind that the court staff and judge **cannot give you legal advice.**

At the end of this manual you will find a Glossary of terms containing definitions of words and terms which are used in this manual but which may not be familiar to you. Please refer to the Glossary whenever you have a question about the exact meaning of a word or term.

- 1. Hiring attorneys, collecting attorneys fees.** The small claims procedures allow a natural person to bring a lawsuit in an informal manner without the aid of an attorney. But if you wish, you may hire an attorney. Corporations, partnerships and other businesses which are not natural persons must be represented by attorneys except in some smaller claims. A person who has a power of attorney for another person may not represent that person in court.

If you hire an attorney, you probably will not be able to get attorney's fees as part of any judgment. Exceptions to this rule exist, such as when a written agreement calls for the payment of attorney's fees or in the case of a bad check.

- 2. Corporations suing in the Small Claims Court.** Because corporations are not natural persons but separate legal entities, **they must be represented by an attorney, except in the following situations:**
  - a. For unassigned claims for \$1,500.00 or less,** a corporation may appear by a designated full-time employee. This means that the claim is owed directly to the corporation and is not a claim that has been assigned to the corporation for collection or other reasons.
  - b.** The Board of Directors of the corporation must designate a specific employee to appear as the corporations in small claims case arising out of the business of the corporations. If such an employee appears for the corporation, the corporation will be bound by all the employee's agreements and actions and will be liable for all costs assessed against the corporation and the employee.
  - c.** Before such a designated employee is allowed to appear, the corporation must file with the court a **Certificate of Compliance** where the corporation states that it has adopted a corporate resolution stating that the designated employee's acts are binding on the corporation. Also, the designated employee must file with the court an **Affidavit**, saying that he or she is not a disbarred or suspended attorney.
  - d.** Collection agencies or other owners of assigned claims must always be represented by an attorney regardless of the amount of the claim.
- 3. Sole proprietors and partnerships appearing by employees.** The owner of a sole proprietorship or a partner in a partnership can appear in the Small Claims Court as a natural person on behalf of his or her business. A sole proprietor or a partnership may appear by an employee but only if the business designates a specific full-time employee and follows the same

requirements as are described above for corporations. This means that a **Certificate of Compliance** and a **Affidavit** must be filed in the court.

**4. What kind of cases can be heard by the Marion County Small Claims Court?** The court can hear claims (suits) for \$6,000 or less involving:

- a. Contracts - this usually means money owed for various reasons. For example, the claim could be for money owed for services rendered, accounts receivable, wages, bad checks.
- b. Torts - this means a claim for some sort of damage, either to property, real or personal, or personal injury.
- c. Landlord and tenant disputes, where the rent due at the time of filing is no more than \$6,000.
- d. Claims for the return of property, called **possessory actions**, where the value of the property sought to be returned does not exceed \$6,000.

**5. Where do you file your claim?**

- a. **Is this the right county?** First you must see if your claim can be filed in Marion County. Supreme Court rules state that a small claim can be filed in the county:
  - i. where the transaction or occurrence actually took place;
  - ii. where the obligation was incurred;
  - iii. where the obligation is to be performed;
  - iv. where one of the defendants lives at the time the claim is filed; or
  - v. where one of the defendants has his or her place of employment at the time the claim is filed.

- b. **What if you filed in the in the wrong place?** If you file in Marion County and it appears that your suit does not meet one of the above requirements, the plaintiff has an option to ask the court to order the suit be transferred or dismissed. The defendant may appear and decide to forego (waive) the above venue requirements. In that case, the suit will remain in the Marion County Small Claims Courts. A contract or an agreement between the parties cannot change this rule.

- c. **Which Small Claims Court division should you use?** All divisions of the Marion County Small Claims Court have county-wide jurisdiction, except in cases involving landlord-tenant disputes. That means that, once you have determined that Marion County is the right place (proper venue) for your claim you may file the claim in any of the township divisions, except for landlord-tenant disputes.

- d. **Requirements for landlord-tenant disputes.** Claims between landlord and tenant, including claims for possession of real estate, for return of property, for return of security deposit, or for damages, must be filed in the township division where the real estate is located. If the township where the real estate is located does not have a small claims court, then the claim can be filed in any other division.

**6. Deadline for filing claims.** The legislature has set certain time limits after which a suit cannot be filed. Such time limits are called **Statutes of Limitations**. Before you file your claim, you should make sure that the statute of limitation has not passed. If you file your claim and the statute of limitations has passed, the court will dismiss your claim. The following are some **common examples** of statutes of limitations: Two (2) years for

- a. personal injury (injury to the person)
- b. damage to personal property

Four (4) years for

- a. contract for the sale of goods, whether written or oral

Six (6) years for

- a. accounts
- b. contracts not in writing (other than contracts for the sale of goods)
- c. rents and use of real estate (landlord-tenant disputes)

- d. damage to real estate
- e. recovery of personal property
- f. promissory notes and contracts for the payment of money

Ten (10) years

- a. written contracts to pay money

Twenty (20) years

- a. written contract other than for a promise to pay money or for the sale of goods.

- 7. How to start your small claim?** A small claim (lawsuit filed in the Small Claims Court) is started when you file a **Notice of Claim**. You may obtain a form Notice of claim from the court.
- a. The **Notice of Claim** calls for specific information which you must complete in order to initiate your small claim. The Notice of Claim tells the court and the defendant what your claim is about. Make sure that you state neatly and briefly the nature of your claim against the Defendant. You will need to fill out several copies of the Notice of Claim. The clerk will tell you how many. The clerk and/or other staff are available to answer your questions about filling out the form, but again, keep in mind, that they cannot give you legal advice.
  - b. If your claim (lawsuit) is based upon a written contract or account, you must provide a copy for the court's records and a copy for each defendant.
  - c. **You must give the clerk the correct name, address and telephone number of the Defendant.**
  - d. You must pay the **filing fee** and a **service of process fee** as described below. You may recover the cost if you win your lawsuit.

**8. Service of the Notice of Claim on the Defendant.**

- a. **Method of service.** The defendant must be given notice of the filing of a claim against him or her. This is done by "**servicing**" a copy of the Notice of Claim on the Defendant.

The Notice of Claim is served by the Constable.

- b. **How Constable serves the Notice of Claim.** The Constable does this by delivering a copy of the Notice of Claim to the Defendant personally, or by leaving a copy at the Defendant's dwelling, or in any other manner provided by Supreme Court rules for **service of process**. A copy of the Notice of Claim is also sent to the defendant by regular mail.
- c. **Costs for service.** The fee for service by the Constable (copy sent by regular or certified mail) is set at \$13.00. These fees are set by state law and are changed from time to time. Check with the clerk for the latest fees.

**9. Setting of trial.**

- a. At the time you file your lawsuit, you will be given a date and time for your trial. This time and date will be indicated on the Notice of Claim. You are expected to have all of your witnesses and evidence with you at the time set for trial.
- b. Supreme Court rules provide that the trial must be set not less than 10 and not more than 40 days after the Defendant is served with the Notice of Claim. If the Constable or the Clerk is unable to locate and notify the Defendant within this time, you may be required to obtain a more current address for the Defendant. If the Defendant cannot be located or notified, you may dismiss the suit or ask for a continuance of the trial date in order to find Defendant's current location and give him or her notice.

- 10. Obtaining information from another party.** if the opposing party has information which you cannot get and which you need in order to pursue your claim, you may request the court to order the other party to disclose this information to you. This process is called **Discovery**. This can be done only after the Notice of Claim has been served on the Defendant. The other party may likewise make such a request of the Court. The court will grant such requests only if a party shows a good reason for needing the information and only after the other party is notified

of the request.

## 11. Counterclaims.

- a. **What are they?** If you are the Defendant and have received notice that you have been sued in Small Claims Court and you believe that you have a claim against the Plaintiff, you may file a **counterclaim** (lawsuit) against the Plaintiff in the same Small Claims Court. If you are a Defendant and you have a counterclaim, you also become a Plaintiff in your counterclaim, and the Plaintiff in the initial claim becomes the Defendant in the counterclaim. The Small Claims Court can hear both claims at the same time.
- b. **When to file a counterclaim?** You must file your counterclaim with the court so that the Plaintiff can receive it at least 7 days before the trial. The counterclaim can be filed on a Notice of Claim form or on another form provided by the Small Claims Court. If the Plaintiff does not receive a copy of your counterclaim within that time, the Plaintiff may request a continuance of the trial date to allow time to prepare and defend against your counterclaim.
- c. **Limit on counterclaims.** The Small Claims Court may only hear counterclaims for \$6,000 or less. At this point, please go back and review instruction #4 for the sort of cases that can be heard by the Small Claims Court. If your counterclaim is for more than \$6,000, you may agree to give up (**waive**) the amount over this limit in order to bring your counterclaim in the Small Claims Court. However, if you do this, you may you may not sue elsewhere for the rest of the counterclaim.
- d. **Requesting transfer of a counterclaim.** If you do not waive (give up) the amount of your not sue elsewhere for the rest of the counterclaim over the court's jurisdictional limit (\$6,000), you may ask that the case be transferred to a court with authority (jurisdiction) to hear the higher amount. Such courts are called "**courts of general jurisdiction**". The rules of procedures used in such courts are much more technical and complex, and most litigants feel they need the assistance of a lawyer in such courts. You must make your request for transfer **in writing** no later than 7 days before the trial. At the same time you request that the case be transferred, you must **pay to the clerk the filing fee** necessary for filing the case in the court with jurisdiction to hear the higher claim. The clerk then has 20 days to transfer the case to the appropriate court where the case will be heard as if it had been filed in that court from the start.
- e. **Failing to request transfer or failing to pay new filing fee.** If you do not make a request to transfer your counterclaim or you make the request but you do not pay the filing fee necessary for the new court, the law assumes that you have waived (given up) the amount of your counterclaim above the \$6,000 limit. In that case, the Small Claims Court will hear both, the claim and the counterclaim, and the court's decision will be final judgment on both, the claim and the counterclaim.

## 12. Jury Trial.

- a. **The Small Claims Court cannot hear jury trials.** When a Plaintiff files in a Small Claims Court, the Plaintiff waives (gives up) the right to trial by jury. (A Plaintiff who wants a trial by jury can file the case in a court of general jurisdiction.) If the Defendant in a small claim wants a jury trial, he or she must make a request no later than 10 days after the Defendant is served with the Notice of Claim. If the Defendant requests a trial by jury, the case stops being a small claim, and it must be transferred to a court that can hear jury trials. The rules of procedure in such courts are more complex and formal and both parties should seriously consider consulting attorneys.
- b. **How to transfer the case for jury trial.** If the Defendant wants a jury trial, Defendant must file a **written request for transfer for trial by jury** and **pay the filing fee** necessary for filing cases in the court where the jury trial will be heard. No later than 20 days after receiving the request for transfer and the necessary filing fee, the clerk shall transfer the case to the appropriate court where it will be heard as if it had been filed there originally.
- c. **Failure to pay the filing fee; Indigence.** If the Defendant fails to pay the filing fee necessary to transfer the case for trial by jury, the law assumes that the Defendant has

given up (waived) the request for jury, and the case will be heard by the Small Claims Court without a jury. A Defendant may ask the court to decide if the Defendant is **indigent** (without sufficient funds to pay for transferring the case) and to be allowed to transfer the case without paying the filing fee.

- 13. Settlements.** If the Plaintiff and the Defendant are able to reach a settlement of the dispute before the trial, they should write down the **settlement agreement**, sign it, and file it with the court. The court will then prepare a **judgment** incorporating the settlement agreement and will enter the judgment in the Court's **Record of Judgments and Orders**.
- 14. Admission of liability.** A Defendant may wish to admit that he or she owes the amount the Plaintiff has sued for and can sign a document, which is called an **Admission of Liability** or **Confessed Judgment**. As with the settlement, this can be done prior to trial. It is filed with the court, and the court signs a judgment which is entered on the Court's Record of Judgments and Orders.
- 15. Continuances.**
  - a. Generally.** A continuance is a postponement of the trial date. Either party can get one continuance for good cause. Each division of the Small Claims Court will have a specifically designated person who will deal with continuances. **Make sure you ask who to contact and how.** Except in unusual circumstances, no party may have more than one continuance unless it is specifically approved by the court. Parties should appear at scheduled hearings unless told by the judge or the court staff that the case has been continued.
  - b. Continuances in landlord-tenant cases.** When the Plaintiff in a landlord-tenant dispute for past due rent and possession gets a continuance of 30 days or more beyond the first trial date, the Plaintiff must file an **Amended Notice of Claim** with the new trial date and **must serve it in the Defendant**. (If the landlord accepts the past due rent, the original claim is concluded and a new and different claim arises for subsequent incident of nonpayment of rent.)
- 16. Change of Judge.** You may request a Change of Judge, but strict time limits apply. A party seeking a Change of Judge must file a written request with the court within 30 days after the suit is filed or earlier if the trial is set within 30 days of the filing of the suit.
- 17. The Trial.**
  - a. Generally.** Arrive on time on the day of your trial. When both parties appear at the time and date scheduled, the trial will be held in an informal but orderly manner. Keep in mind that the attendance of witnesses and the presentation of exhibits at the trial are the sole responsibility of the parties.
  - b. Witnesses and exhibits.** Make sure you bring all necessary documents with you to the trial. If you use documents as exhibits in the trial (show them to the judge), they will have to be retained with the court's records. If you need to retain the original documents, also bring photocopies. If the judge is satisfied as to the genuineness of the copies and there is no objection by the other party, the photocopies may be identified and made part of the court record in place of the original documents.
  - c. Subpoenas.** If a witness you need does not want to appear and testify voluntarily, a party may request the court to issue a subpoena ordering the witness to appear. Requests for subpoenas should be made as early as possible.
  - d. Plaintiff's case.** The Plaintiff will present the Plaintiff's case first by presenting the Plaintiff's evidence. Evidence can be in the form of testimony, documents, pictures or a number of other physical evidence which can be reviewed by the judge. The Plaintiff may testify under oath, may have other witnesses testify under oath and may ask the Defendant to testify under oath. The Plaintiff may present to the court different documents and other physical to support the Plaintiff's claim. After each witness testifies the Defendant may follow up with questions about the issues of the witnesses testimony.

This is called **cross-examination**.

- e. **Defendant's case.** After the Plaintiff has finished presenting his or her claim, the Defendant may present his or her defenses. This can be done by the Defendant testifying, calling other witnesses and having the Plaintiff testify. After each witness, the Plaintiff may question the Defendant's witnesses about what they had testified. The Defendant may also present documents and other evidence in support of his or her defense.
- f. **Rebuttal.** After the Defendant has finished, the Plaintiff may present additional evidence to **rebut** the Defendant's evidence. But the Plaintiff may not repeat what was already presented to the court.
- g. **Final statements.** At the end, the court may allow each side to make brief final statements.
- h. **General conduct at trial.** Remember that, although the trial is informal, all parties and witnesses must conduct themselves appropriately. All are subject to penalties for contempt of court and for perjury, which means lying under oath.

During the trial, the judge may stop at any time to ask questions of the parties or witnesses and may have other specific rules or time limitations.

Remember, the judge can base the decision only on the facts presented by the parties at the trial and on the law as it applies to those facts. It is important to know as much about your case as possible and tell the court the actual facts.

## 18. Burden of Proof.

- a. **What plaintiff must prove.** If you are a party trying to recover damages as a Plaintiff on a claim or as a Defendant on a counterclaim, you have the burden of proving your case by **preponderance of the evidence**. This means that, to win, the evidence has to be more convincing than that of the other party. If each party's evidence is equal, you will not win. The party trying to recover damages must prove two things before the court can award judgment:
  - i. **Liability:** You must prove by your evidence that the other party has done something that makes him or her liable to you for damages.
  - ii. **Damages.** After you prove that the other party is liable to you, you must prove an actual amount of damages. This means that you must **prove** (not just ask) how much the other party should pay you. The judge cannot speculate or guess how much the damage is.
- b. **Example:** You were involved in a car accident and you proved to the court that the other party caused the accident because two witnesses said he ran a red light. This, however, does not mean that the other party must pay you unless you can prove how much your car was damaged. A convenient way to prove your damages is for you to bring legitimate estimates from a reputable auto repair shops of how much the repair would cost. Also, remember that the injured party has a duty to keep the damages down.

## 19. Judge's decision - Judgment.

- a. The court may make a decision at the end of the trial or decide to postpone the decision for a time (**take the matter under advisement**) and send the parties a written decision in the mail at a later date. The final decision of the Court is called a **judgment**. Once signed, the judgment is entered in the Court's **Record of Judgments and Orders** and remains a permanent record of the Court.
- b. **Manner of payment.** The court may order that a judgment be paid in a specified manner. The court may also modify the manner or schedule of payment.
- c. **Payment of the judgment.** Once the judgment has been paid in full, the party that received it must notify the court. This can be done by filing a form **Satisfaction of Judgment**. A plaintiff who routinely fails to notify the Court that his or her judgment has

been paid, may subject himself or herself to sanctions by the Court.

- d. **Small Claims Court Judgment as lien on real estate.** Indiana law provides that a judgment of the Small Claims Court could become a **lien on real estate**, but only if the party obtaining the judgment takes it to be filed in the judgment docket book of the Marion County Circuit Court.

**20. What happens if the Plaintiff fails to appear at the trial?** If the Plaintiff fails to appear, absent unusual circumstances, the case will be dismissed **without prejudice**. This means that the Plaintiff can refile the claim by paying another filing fee and serving the Defendant with the new claim. (If the Plaintiff fails to appear a second time for trial, absent unusual circumstances, the court may **dismiss the case with prejudice**. This means that the second dismissal of the same case will prevent the Plaintiff from attempting further action in the case.)

**21. What happens if the Defendant fails to appear?**

- a. **Default judgment.** If the Plaintiff shows up and the Defendant does not, the Plaintiff can ask for a **default judgment** against the Defendant. Before the judge can grant a default judgment the Plaintiff must prove the following:

- i. That the Defendant was served with the Notice of Claim on time;
- ii. That, so far as the Plaintiff knows, the Defendant has no legal, physical, or mental disability that would keep him or her from attending the trial or that would prevent the Defendant from understanding the nature of the proceedings.
- iii. That the Plaintiff has a valid claim and should recover from the Defendant.

- b. **Testimony or Affidavit required.** The Court may require that the Plaintiff give testimony under oath or may allow a Plaintiff to do this by **Affidavit**. The Affidavit is a written document in which the Plaintiff states, under the penalties of perjury, that (i) through (iii) above are true.

**22. Vacating a default judgment.** If a Defendant has had a default judgment entered against him or her, the Defendant may file a written request with the court to have the default judgment **vacated** or **set aside**. The request must be filed within 1 year of the date the judgment was entered. The court may hold a hearing where the parties may appear or may decide the motion without a hearing. The Defendant must show "good cause" for vacating the default judgment. Good cause could be many things, including lack of actual notice. If the court sets aside the default judgment, the case will be scheduled for a new trial on the original claim.

If one year or more has passed since the default judgment was issued, the defendant can still file an action to reverse the judgment, but the procedure is much more complex and the help of an attorney may be useful.

**23. Landlord-tenant issues.**

- a. **Writ of possession.** A Landlord who brings a lawsuit to collect past due rent and to seek eviction for non-payment of rent may receive a judgment for the past due rent and a **Writ of Eviction and/or Possession** of the premises. Landlords are required to **mitigate any damages** (to reduce damages). For example, if the tenant left the premises before the lease is up, the landlord must make every reasonable effort to release the premises and thereby reduce the rent from the tenant for the remainder of the lease term.
- b. **Thirty day limit.** A Writ of possession is effective for no more than thirty (30) consecutive days from the date it is issued. That means, that the landlord has a responsibility to carry out the eviction within thirty (30) days. A landlord who receives a judgment for past due rent has thirty (30) days from the date of the judgment to file under the same case for a Writ of Possession. If thirty (30) days have passed since the judgment was issued, then the landlord must file a new claim in order to seek possession. Also, review **Instruction #15 (b)** about continuances in these sort of cases.

## 24. Collection of a small claim judgment.

- a. **Generally.** A party who wins his or her lawsuit, receives a judgment from the court indicating that a person owes the winning party a sum of money. A judgment is valid for ten (10) years and can be renewed. After judgment, the winning party is called "**judgment creditor.**" Collecting the judgment is the judgment creditor's (winning party's) responsibility. The length of time it will take to collect the judgment will depend upon the debtor's ability to pay and the creditor's diligence.
- b. **If payment is not made.**
  - i. If the defendant does not pay the judgment, the judgment creditor can go back to court to force the collection of the judgment. This sort of proceeding is known as **Proceeding Supplemental**. The judgment creditor needs to file with the court a verified (sworn under penalties for perjury) **Motion for Proceeding Supplemental** or **Affidavit** (a declaration that the statements are made under criminal penalties for perjury), asking that the court order the Defendant to appear and answer about what sort of property or employment he or she may have. You should check with the court's staff for an appropriate form motion. The court will order the defendant to appear and answer about his or her employment.
  - ii. If you know that the judgment debtor has a job and know the correct name and address of the employer, you should give the information to the court staff and ask that they issue (send out) what are called **Interrogatories** (written questions). These questions are served on the employer together with your Motion for Proceedings Supplemental. The court can decide from the answers the employer sends back if the debtor has wages which can be garnished.
  - iii. The motion for proceedings supplemental, along with the court's order (giving the time for the appearance and hearing or the time for the answer to interrogatories) must be served on the debtor and on the employer.
- c. **Hearing on Proceedings Supplemental.** At the hearing, you will have an opportunity to ask the debtor or to tell the court about the debtor's ability to pay. The judge may order any of the following:
  - i. the judgment debtor to pay the judgment in full or in installments;
  - ii. the judgment debtor to give the Court current and correct information about the debtor's employment status;
  - iii. the judgment debtor to appear in the future and bring additional information;
  - iv. garnish the debtor's earnings;
  - v. execution against the debtor's personal property;
- d. **What do the court's actions mean?**
  - i. **i. Garnishment.** This is a court order to the judgment debtor's employer ordering the employer to withhold a set amount of the debtor's wages so that the judgment can be paid off. The law limits the amount of income that can be garnished and regulates the kinds of income that can be garnished. Only one garnishment can be applied at one time; it is important to "get in line" because garnishment orders are paid in the order that they are received by the employer. If the debtor changes jobs, you have to go back to court to obtain a garnishment order against the new employer.
  - ii. **Execution against personal property.** This means the personal property of the debtor can be "**attached**" and sold pursuant to a court order and the proceeds by state laws and is subject to many legal exemptions. For that reason, it is can be used to pay a judgment. This sort of collection is controlled strictly advisable that you consult with an attorney if you wish to collect a judgment by this method.
  - iii. **If the debtor fails to follow the court order** or if you believe that the debtor's ability to pay has improved, you may go back to court and ask that the debtor be ordered to come back to court. This can be done through the lifetime of the

judgment.

- iv. **If the debtor fails to appear.** If the debtor is served with the notice of the hearing on proceedings supplemental, and does not attend, the judgment creditor can ask the court to issue what is called a "**body attachment**" against the debtor. This means the debtor can be arrested for failure to appear at the ordered hearing (not for failure to pay a debt).
  - v. **If the debtor cannot be found** to be served with the order to appear, the judgment creditor can ask the court to continue the hearing so the creditor can locate the debtor. Locating the debtor is the responsibility of the winning party, not the court.
  - vi. **If the debtor dies** before the judgment is paid off, the creditor (winning party) must file a claim with the debtor's estate. The estates are handled by the probate division of the Superior court.
  - vii. **If the debtor files bankruptcy**, and your judgment is listed in the bankruptcy petition, the court is required by Federal law to stop collection proceedings. In that case, your only remedy is in Federal Bankruptcy Court.
- 25. Appeals.** If one or both parties are not satisfied with the court's decision and judgment, they may appeal the decision. State law provides that the appeal from the decision of the Marion County Small Claims Court is a whole new trial (called **trial de nova**) in the Marion County Superior Court. The party must file the appeal within sixty (60) days after the judgment is issued. The rules of the Superior Court require that the Small Claims Court **stay the execution** of the Small Claims Court judgment. This means that the judgment cannot be collected during the appeal process.

If a party has missed the sixty (60) day time limit for filing an appeal because of circumstances not under the party's control, the party can ask the Superior Court to authorize the filing of a late appeal.

The de novo appeals in the Superior Court are governed by formal rules of procedure, and it's probably advisable to seek the help of an attorney. The judgment of the Superior Court in a de novo appeal becomes the judgment in case.

## **GLOSSARY**

1. **Agreed Judgment** - This is used to refer to an agreement by the parties settling their dispute. When the agreement is approved, signed by the judge and entered in the court's Record of Orders and Judgments, it becomes the judgment of the court.
2. **Affidavit** - A written statement in which the person making the statement swears under criminal penalties for perjury that the statement is true.
3. **Body Attachment** - An order of arrest signed by the judge issued when a party fails to appear after being ordered by a court order to appear in court.
4. **Claim** - Another name used for lawsuit.
5. **Claimant** - Another name for the Plaintiff.
6. **Contempt of Court** - An act or a failure to act which obstructs or interferes with the operation of the court.
7. **Continuance** - A postponement of a hearing, trial date or another date set by the court.
8. **Chronological Case Summary (CCS)** - This is a brief summary record, organized like a calendar, of the important events in a case. The CCS should show all filings, return of service, whether notice was sent, all hearings, trials, orders, judgments and so on.
9. **Counterclaim** - A claim that the Defendant has against the Plaintiff.

10. **Damages** - A monetary value placed on the injury or loss that the Plaintiff has claimed.
11. **Default judgment** - A decision in a case made by the court when the Defendant has failed to appear.
12. **Defendant** - The person being sued.
13. **Discovery** - A procedure by which one party in the lawsuit request disclosure of information and or documents held by the other party.
14. **Dismissal** - When a court orders a lawsuit closed out and removed from active status, usually prior to trial. Dismissal can be with prejudice, which means the same case cannot be refiled. If the dismissal is without prejudice, it means that the case can be refiled.
15. **Eviction** - The legal process for removing someone from real property.
16. **Garnishee Defendant** - A third party, often an employer or someone hold property belonging to the Judgment Debtor. The Garnishee Defendant becomes a party to a lawsuit during Proceedings Supplemental.
17. **Garnishment** - An order of the court directing that property (cash, wages, etc.) controlled by a third party (Garnishee Defendant) be used to pay a judgment.
18. **Interrogatories** - Written questions posed to a party in the case, usually asking specific information relating to the case. In small claims cases, interrogatories are usually directed to the Judgment Debtor asking questions about employment and property and to the Judgment Debtor's employer, asking questions about wages.
19. **Judgment** - A final decision of the court. The judgment must be signed by the judge and entered in the Record of Judgments and Orders of the particular court.
20. **Judgment Creditor** - The party who receives a favorable judgment for a sum of money.
21. **Judgment Debtor** - The losing party in a lawsuit who must pay a judgment to the winning party.
22. **Jurisdiction** - The authority of a court to hear and decide cases.
23. **Lien** - A legal claim of one person upon the property of another to secure the payment of a debt.
24. **Litigant** - A person engaged in a lawsuit.
25. **Motion** - A request (usually in writing) asking the court to do something.
26. **Notice of Claim** - A written statement of a claim against the defendant that serves as a notice that a lawsuit has been filed.
27. **Party** - The person or business suing or being sued.
28. **Plaintiff** - The person suing (starting the lawsuit).
29. **Proceedings Supplemental** - A proceeding by which a party who has won a judgment can proceed to collect.
30. **Rebuttal** - Portion of the trial in which the opposing party brings evidence to rebut or oppose the other party's contentions.
31. **Record of Judgments and Orders** - A day by day official record of the court showing all the court orders and judgments for each day.

32. **Release of Judgment** - A statement entered on the court's records indicating that the judgment has been paid.

33. **Motion for Rule to Show Cause** - A written request asking the court to order a party to appear in court and show the court why the party should not be held in contempt of court for failing to obey a specific court order.

34. **Statute of Limitations** - A time limit set by state law for filing a case.

35. **Subpoena** - A written order issued in the name of a court but signed by the Clerk (or a lawyer appearing in the court) requiring that a person appear as a witness at a hearing or trial. A subpoena may also command the person to whom it is directed to produce books, papers, documents or other things. A person who receives a subpoena and disagrees with it may ask the court to "quash" or stop enforcement of the subpoena.

36. **Vacate** - Means to make a judgment or other court order ineffective.

37. **Venue** - The county or township (appropriate location) where the lawsuit is to be heard.