

Marion County Small Claims Courts

Court Revenue

2006-2010

Center Township

	2010	2009	2008	2007	2006
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State Funds					
Judicial Salary	\$135,729	\$132,565	\$0	\$114,464	\$0
Public Defense Administration	\$41,763	\$40,789	\$44,120	\$42,288	\$0
Judicial Insurance Adjustment	\$13,921	\$13,596	\$15,623	\$14,277	\$58,065
Auto Record	\$97,447	\$95,175	\$109,777	\$105,630	\$148,139
Court Administration	\$41,763	\$40,789	\$59,698	\$44,756	\$0
Other	\$0	\$0	\$18,158	\$0	\$0
Total	\$330,623	\$322,914	\$247,376	\$321,415	\$206,204

County Funds					
Document Storage	\$27,842	\$27,193	\$0	\$28,237	\$0
Other	\$0	\$0	\$710	\$4,313	\$0
Total	\$27,842	\$27,193	\$710	\$32,550	\$0

Local Funds					
Filing/Docket	\$522,377	\$509,797	\$561,294	\$529,112	\$429,139
Redocket	\$30,080	\$29,077	\$0	\$0	\$0
Document Storage	\$0	\$0	\$29,569	\$0	\$35,266
Court Administration Fee	\$27,842	\$27,193	\$0	\$0	\$0
Judicial Salary	\$45,243	\$44,188	\$177,436	\$38,155	\$0
Other	\$140	\$70	\$0	\$19,526	\$19,435
Total	\$625,682	\$610,325	\$768,299	\$586,793	\$483,840

Money to Others					
Process Certified Mail	\$1	\$0	\$349,978	\$423,100	\$0
Process Personal Service	\$479,543	\$437,619	\$0	\$0	\$350,275
Process Additional Defendant	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$1,289,165	\$0
Total	\$479,544	\$437,619	\$349,978	\$1,712,265	\$350,275

Total Revenue	\$1,463,691	\$1,398,051	\$1,366,363	\$2,653,023	\$1,040,319
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Court Revenue
2006-2010

Decatur Township

	2010	2009	2008	2007	2006
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State Funds					
Judicial Salary	\$75,279	\$85,244	\$82,576	\$50,669	\$35,937
Public Defense Administration	\$23,163	\$26,229	\$26,352	\$17,490	\$14,916
Judicial Insurance Adjustment	\$7,718	\$8,743	\$8,784	\$5,830	\$4,972
Auto Record	\$54,047	\$61,201	\$61,473	\$44,338	\$34,964
Court Administration	\$23,163	\$26,229	\$26,352	\$17,490	\$12,353
Other	\$0	\$0	\$0	\$0	\$0
Total	\$183,370	\$207,646	\$205,537	\$135,817	\$103,142

County Funds					
Document Storage	\$15,412	\$17,486	\$0	\$11,660	\$0
Other	\$0	\$0	\$17,568	\$0	\$0
Total	\$15,412	\$17,486	\$17,568	\$11,660	\$0

Local Funds					
Filing/Docket	\$336,884	\$373,821	\$353,511	\$257,105	\$201,933
Redocket	\$0	\$0	\$0	\$0	\$0
Document Storage	\$0	\$0	\$0	\$0	\$9,944
Court Administration Fee	\$15,442	\$17,486	\$0	\$0	\$0
Judicial Salary	\$25,093	\$28,415	\$27,525	\$16,920	\$13,032
Other	\$0	\$0	\$9,386	\$0	\$0
Total	\$377,419	\$419,722	\$390,422	\$274,025	\$224,909

Money to Others					
Process Certified Mail	\$0	\$0	\$336,902	\$0	\$0
Process Personal Service	\$385,515	\$346,538	\$0	\$220,669	\$204,442
Process Additional Defendant	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$385,515	\$346,538	\$336,902	\$220,669	\$204,442

Total Revenue	\$961,716	\$991,392	\$950,429	\$642,171	\$532,493
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Court Revenue
2006-2010

Lawrence Township

	2010	2009	2008	2007	2006
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State Funds					
Judicial Salary	\$70,190	\$69,372	\$73,500	\$64,669	\$63,082
Public Defense Administration	\$21,597	\$21,345	\$24,030	\$22,491	\$23,946
Judicial Insurance Adjustment	\$7,199	\$7,115	\$8,010	\$7,497	\$7,982
Auto Record	\$50,393	\$49,805	\$57,520	\$52,479	\$55,887
Court Administration	\$26,553	\$35,577	\$31,656	\$22,491	\$2,053
Other	\$0	\$0	\$0	\$0	\$0
Total	\$175,932	\$183,214	\$194,716	\$169,627	\$152,950

County Funds					
Document Storage	\$14,413	\$14,235	\$0	\$0	\$0
Other	\$0	\$0	\$16,048	\$0	\$0
Total	\$14,413	\$14,235	\$16,048	\$0	\$0

Local Funds					
Filing/Docket	\$266,466	\$263,255	\$296,398	\$291,211	\$309,235
Redocket	\$14,345	\$15,400	\$14,326	\$0	\$0
Document Storage	\$0	\$0	\$0	\$0	\$16,003
Court Administration Fee	\$9,442	\$0	\$0	\$0	\$0
Judicial Salary	\$23,397	\$23,124	\$24,980	\$0	\$21,027
Other	\$196	\$0	\$0	\$0	\$0
Total	\$313,846	\$301,779	\$335,704	\$291,211	\$346,265

Money to Others					
Process Certified Mail	\$0	\$74,618	\$88,561	\$0	\$226,786
Process Personal Service	\$239,688	\$174,108	\$164,471	\$227,401	\$0
Process Additional Defendant	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$239,688	\$248,726	\$253,032	\$227,401	\$226,786

Total Revenue	\$743,879	\$747,954	\$799,500	\$688,239	\$726,001
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Court Revenue
2006-2010

Perry Township

	2010	2009	2008	2007	2006
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	State Funds				
Judicial Salary	\$44,518	\$49,393	\$55,125	\$47,928	\$20,936
Public Defense Administration	\$14,008	\$15,195	\$18,126	\$16,678	\$7,627
Judicial Insurance Adjustment	\$4,669	\$5,065	\$6,042	\$5,560	\$2,542
Auto Record	\$32,681	\$35,454	\$42,315	\$38,990	\$17,864
Court Administration	\$15,003	\$15,201	\$15,404	\$16,675	\$7,547
Other	\$0	\$0	\$0	\$0	\$13,332
Total	\$110,879	\$120,308	\$137,012	\$125,831	\$69,848

	County Funds				
Document Storage	\$9,344	\$9,323	\$0	\$11,132	\$0
Other	\$0	\$0	\$9,840	\$0	\$0
Total	\$9,344	\$9,323	\$9,840	\$11,132	\$0

	Local Funds				
Filing/Docket	\$172,790	\$172,605	\$192,400	\$205,989	\$200,524
Redocket	\$15,689	\$11,549	\$15,579	\$11,086	\$11,483
Document Storage	\$0	\$0	\$0	\$0	\$10,196
Court Administration Fee	\$10,002	\$13,358	\$0	\$0	\$0
Judicial Salary	\$15,174	\$15,147	\$16,827	\$15,976	\$0
Other	\$0	\$0	\$3,224	\$0	\$0
Total	\$213,655	\$212,659	\$228,030	\$233,051	\$222,203

	Money to Others				
Process Certified Mail	\$0	\$152,514	\$174,510	\$156,362	\$156,345
Process Personal Service	\$183,810	\$0	\$0	\$0	\$0
Process Additional Defendant	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$183,810	\$152,514	\$174,510	\$156,362	\$156,345

Total Revenue	\$517,688	\$494,804	\$549,392	\$526,376	\$448,396
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Court Revenue
2006-2010

Pike Township

	2010	2009	2008	2007	2006
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State Funds					
Judicial Salary	\$74,773	\$94,780	\$94,126	\$83,600	\$75,700
Public Defense Administration	\$24,828	\$29,163	\$30,006	\$29,142	\$28,860
Judicial Insurance Adjustment	\$8,276	\$9,721	\$10,002	\$9,715	\$9,644
Auto Record	\$57,932	\$68,047	\$70,014	\$68,005	\$67,599
Court Administration	\$24,828	\$29,163	\$30,006	\$29,131	\$23,977
Other	\$0	\$0	\$0	\$0	\$0
Total	\$190,637	\$230,874	\$234,154	\$219,593	\$205,780

County Funds					
Document Storage	\$16,552	\$19,442	\$0	\$19,430	\$0
Other	\$0	\$0	\$20,004	\$0	\$0
Total	\$16,552	\$19,442	\$20,004	\$19,430	\$0

Local Funds					
Filing/Docket	\$306,212	\$359,677	\$370,074	\$359,455	\$357,309
Redocket	\$31,107	\$31,195	\$29,470	\$29,395	\$30,471
Document Storage	\$0	\$0	\$0	\$0	\$19,314
Court Administration Fee	\$16,552	\$19,442	\$0	\$0	\$0
Judicial Salary	\$26,897	\$31,593	\$31,375	\$27,867	\$25,233
Other	\$0	\$0	\$10,958	\$0	\$0
Total	\$380,768	\$441,907	\$441,877	\$416,717	\$432,327

Money to Others					
Process Certified Mail	\$309,426	\$346,826	\$335,592	\$339,490	\$0
Process Personal Service	\$0	\$0	\$0	\$0	\$349,270
Process Additional Defendant	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$309,426	\$346,826	\$335,592	\$339,490	\$349,270

Total Revenue	\$897,383	\$1,039,049	\$1,031,627	\$995,230	\$987,377
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Court Revenue
2006-2010

Warren Township

	2010	2009	2008	2007	2006
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State Funds					
Judicial Salary	\$68,582	\$68,267	\$67,168	\$59,938	\$69,946
Public Defense Administration	\$21,102	\$20,913	\$21,522	\$20,799	\$26,658
Judicial Insurance Adjustment	\$7,034	\$6,971	\$7,174	\$6,933	\$8,886
Auto Record	\$49,238	\$48,797	\$50,218	\$48,531	\$62,202
Court Administration	\$21,264	\$20,913	\$21,522	\$20,799	\$22,173
Other	\$0	\$0	\$0	\$0	\$0
Total	\$167,220	\$165,861	\$167,604	\$157,000	\$189,865

County Funds					
Document Storage	\$14,068	\$10,466	\$0	\$13,866	\$0
Other	\$0	\$0	\$13,104	\$0	\$0
Total	\$14,068	\$10,466	\$13,104	\$13,866	\$0

Local Funds					
Filing/Docket	\$260,271	\$257,927	\$265,475	\$256,706	\$328,856
Redocket	\$18,650	\$19,670	\$18,660	\$21,040	\$24,980
Document Storage	\$0	\$0	\$0	\$0	\$16,232
Court Administration Fee	\$14,068	\$13,942	\$0	\$0	\$0
Judicial Salary	\$22,861	\$22,656	\$22,389	\$19,979	\$23,315
Other	\$1,026	\$51	\$6,988	\$89	\$0
Total	\$316,876	\$314,246	\$313,512	\$297,814	\$393,383

Money to Others					
Process Certified Mail	\$0	\$0	\$0	\$0	\$0
Process Personal Service	\$277,442	\$272,344	\$273,442	\$271,545	\$384,337
Process Additional Defendant	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$277,442	\$272,344	\$273,442	\$271,545	\$384,337

Total Revenue	\$775,606	\$762,917	\$767,662	\$740,225	\$967,585
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Court Revenue
2006-2010

Washington Township

	2010	2009	2008	2007	2006
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State Funds					
Judicial Salary	\$63,824	\$56,765	\$55,286	\$49,428	\$45,830
Public Defense Administration	\$19,638	\$17,466	\$17,664	\$17,217	\$17,471
Judicial Insurance Adjustment	\$6,546	\$5,822	\$5,888	\$5,739	\$5,807
Auto Record	\$45,822	\$40,754	\$41,216	\$40,173	\$40,649
Court Administration	\$19,638	\$17,466	\$17,664	\$17,217	\$14,651
Other	\$0	\$0	\$0	\$0	\$0
Total	\$155,468	\$138,273	\$137,718	\$129,774	\$124,408

County Funds					
Document Storage	\$13,092	\$11,644	\$0	\$11,478	\$0
Other	\$0	\$0	\$11,776	\$0	\$0
Total	\$13,092	\$11,644	\$11,776	\$11,478	\$0

Local Funds					
Filing/Docket	\$242,215	\$215,464	\$217,856	\$212,369	\$219,117
Redocket	\$10,211	\$5,619	\$5,755	\$4,830	\$3,220
Document Storage	\$0	\$0	\$0	\$0	\$11,614
Court Administration Fee	\$13,092	\$11,644	\$0	\$0	\$0
Judicial Salary	\$21,275	\$18,922	\$18,429	\$16,476	\$15,277
Other	\$0	\$340	\$6,118	\$0	\$0
Total	\$286,793	\$251,989	\$248,158	\$233,675	\$249,228

Money to Others					
Process Certified Mail	\$0	\$0	\$0	\$0	\$14,898
Process Personal Service	\$10,809	\$86,966	\$149,942	\$140,634	\$121,438
Process Additional Defendant	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$10,809	\$86,966	\$149,942	\$140,634	\$136,336

Total Revenue	\$466,162	\$488,872	\$547,594	\$515,561	\$509,972
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Court Revenue
2006-2010

Wayne Township

	2010	2009	2008	2007	2006
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State Funds					
Judicial Salary	\$57,359	\$12,841	\$67,685	\$20,589	\$79,643
Public Defense Administration	\$17,649	\$3,951	\$22,401	\$24,810	\$31,313
Judicial Insurance Adjustment	\$5,883	\$1,317	\$7,470	\$8,270	\$10,471
Auto Record	\$41,181	\$9,219	\$52,369	\$55,890	\$71,297
Court Administration	\$17,649	\$3,951	\$22,401	\$24,810	\$25,163
Other	\$0	\$0	\$0	\$0	\$0
Total	\$139,721	\$31,279	\$172,326	\$134,369	\$217,887

County Funds					
Document Storage	\$11,766	\$2,634	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$11,766	\$2,634	\$0	\$0	\$0

Local Funds					
Filing/Docket	\$217,697	\$48,729	\$276,304	\$304,387	\$394,692
Redocket	\$14,900	\$3,015	\$15,355	\$18,130	\$14,650
Document Storage	\$0	\$0	\$14,934	\$13,728	\$20,782
Court Administration Fee	\$11,766	\$2,634	\$0	\$0	\$0
Judicial Salary	\$19,120	\$4,280	\$22,221	\$26,307	\$28,381
Other	\$29	\$0	\$0	\$0	\$0
Total	\$263,512	\$58,658	\$328,814	\$362,552	\$458,505

Money to Others					
Process Certified Mail	\$0	\$0	\$208,728	\$0	\$0
Process Personal Service	\$190,354	\$39,117	\$0	\$255,918	\$309,267
Process Additional Defendant	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$190,354	\$39,117	\$208,728	\$255,918	\$309,267

Total Revenue	\$605,353	\$131,688	\$709,868	\$752,839	\$985,659
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Court Revenue
2006-2010

Franklin Township

	2010	2009	2008	2007	2006
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State Funds					
Judicial Salary	\$62,995	\$50,983	\$58,676	\$67,364	\$53,290
Public Defense Administration	\$19,383	\$15,687	\$18,894	\$23,466	\$20,388
Judicial Insurance Adjustment	\$6,461	\$5,229	\$6,298	\$7,822	\$6,796
Auto Record	\$45,227	\$36,603	\$44,086	\$54,754	\$47,572
Court Administration	\$19,383	\$15,687	\$18,894	\$23,466	\$16,685
Other	\$0	\$0	\$0	\$0	\$0
Total	\$153,449	\$124,189	\$146,848	\$176,872	\$144,731

County Funds					
Document Storage	\$12,922	\$10,458	\$0	\$0	\$0
Other	\$0	\$0	\$12,079	\$0	\$0
Total	\$12,922	\$10,458	\$12,079	\$0	\$0

Local Funds					
Filing/Docket	\$239,057	\$193,473	\$248,651	\$305,589	\$268,422
Redocket	\$19,629	\$18,455	\$505	\$0	\$0
Document Storage	\$0	\$0	\$0	\$15,644	\$13,592
Court Administration Fee	\$12,922	\$10,458	\$0	\$0	\$0
Judicial Salary	\$20,998	\$16,994	\$19,559	\$22,455	\$17,763
Other	\$541	\$404	\$5,778	\$0	\$0
Total	\$293,147	\$239,784	\$274,493	\$343,688	\$299,777

Money to Others					
Process Certified Mail	\$0	\$0	\$0	\$0	\$0
Process Personal Service	\$226,098	\$201,763	\$9,578	\$222,615	\$220,753
Process Additional Defendant	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$226,098	\$201,763	\$9,578	\$222,615	\$220,753

Total Revenue	\$685,616	\$576,194	\$442,998	\$743,175	\$665,261
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Marion County Small Claims Courts
Court Expenditures
2006-2010

Center Township

	2010	2009	2008	2007	2006
Judges	\$68,971	\$68,971	\$68,971	\$67,289	\$67,637
Admin and Staff	\$0	\$0	\$0	\$0	\$0
Clerks	\$211,196	\$202,363	\$182,511	\$174,173	\$166,075
Salary Fringe	\$60,891	\$144,839	\$140,210	\$104,538	\$0
Total	\$341,058	\$416,173	\$391,692	\$346,000	\$233,712

Judge Pro Tem	\$0	\$765	\$650	\$0	\$1,175
Interpreter Fees	\$0	\$2,220	\$1,028	\$0	\$1,030
Other Non Salaried	\$0	\$0	\$0	\$0	\$103,201
Total	\$0	\$2,985	\$1,678	\$0	\$105,406

Phone	\$7,094	\$8,114	\$0	\$9,096	\$0
Dues Subscription	\$1,250	\$0	\$0	\$354	\$0
Postage	\$2,000	\$2,833	\$0	\$0	\$0
Rentals	\$4,688	\$0	\$0	\$16,001	\$30,918
Contract Printing	\$0	\$6,689	\$0	\$0	\$0
Training	\$0	\$0	\$0	\$0	\$0
Rental Tech	\$0	\$0	\$0	\$0	\$0
Supplies	\$0	\$0	\$0	\$0	\$23,803
Other	\$7,191	\$3,928	\$29,476	\$1,943	\$14,975
Total	\$22,223	\$21,564	\$29,476	\$27,394	\$69,696

Legal Library	\$0	\$0	\$0	\$0	\$0
Office Equipment	\$0	\$0	\$0	\$0	\$0
Comp Equipment	\$0	\$0	\$5,488	\$0	\$0
Other Supplies	\$10,754	\$3,765	\$0	\$17,696	\$0
Other	\$0	\$130	\$0	\$0	\$8,000
Total	\$10,754	\$3,895	\$5,488	\$17,696	\$8,000

Transportation	\$0	\$0	\$0	\$0	\$0
Lodging	\$0	\$0	\$0	\$0	\$0
Other	\$1,920	\$870	\$0	\$20	\$0
Total	\$1,920	\$870	\$0	\$20	\$0

Total Expenditures	\$375,955	\$445,487	\$428,334	\$391,110	\$416,814
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Court Expenditures
2006-2010

Decatur Township

	2010	2009	2008	2007	2006
Judges	\$57,794	\$56,661	\$53,963	\$52,392	\$52,392
Admin and Staff	\$45,600	\$237,007	\$146,578	\$0	\$0
Clerks	\$134,009	\$0	\$0	\$131,037	\$142,060
Salary Fringe	\$95,671	\$0	\$51,161	\$56,207	\$0
Total	\$333,074	\$293,668	\$251,702	\$239,636	\$194,452
Judge Pro Tem	\$0	\$0	\$0	\$0	\$0
Interpreter Fees	\$600	\$600	\$360	\$360	\$0
Other Non Salaried	\$0	\$0	\$0	\$0	\$0
Total	\$600	\$600	\$360	\$360	\$0
Phone	\$4,081	\$4,056	\$3,678	\$3,962	\$0
Dues Subscription	\$0	\$0	\$0	\$0	\$0
Postage	\$7,174	\$7,635	\$9,195	\$5,977	\$0
Rentals	\$594	\$0	\$594	\$0	\$594
Contract Printing	\$3,104	\$0	\$0	\$0	\$0
Training	\$0	\$0	\$0	\$0	\$0
Rental Tech	\$0	\$857	\$0	\$594	\$0
Supplies	\$0	\$0	\$0	\$0	\$15,839
Other	\$46,522	\$43,384	\$29,077	\$28,101	\$22,346
Total	\$61,475	\$55,932	\$42,544	\$38,634	\$38,779
Legal Library	\$3,953	\$4,006	\$3,363	\$2,759	\$0
Office Equipment	\$0	\$0	\$0	\$1,326	\$0
Comp Equipment	\$324	\$0	\$11,301	\$0	\$0
Other Supplies	\$0	\$0	\$0	\$0	\$0
Other	\$6,580	\$300	\$0	\$0	\$0
Total	\$10,857	\$4,306	\$14,664	\$4,085	\$0
Transportation	\$0	\$0	\$0	\$0	\$0
Lodging	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$158	\$0
Total	\$0	\$0	\$0	\$158	\$0
Total Expenditures	\$406,006	\$354,506	\$309,270	\$282,873	\$233,231

Court Expenditures
2006-2010

Lawrence Township

	2010	2009	2008	2007	2006
Judges	\$57,400	\$57,400	\$55,702	\$53,560	\$52,942
Admin and Staff	\$0	\$1,028	\$6,314	\$0	\$70,330
Clerks	\$175,000	\$175,000	\$169,769	\$166,561	\$109,563
Salary Fringe	\$0	\$0	\$0	\$0	\$0
Total	\$232,400	\$233,428	\$231,785	\$220,121	\$232,835
Judge Pro Tem	\$221	\$275	\$250	\$100	\$0
Interpreter Fees	\$120	\$0	\$145	\$0	\$0
Other Non Salaried	\$0	\$0	\$0	\$0	\$0
Total	\$341	\$275	\$395	\$100	\$0
Phone	\$6,077	\$5,464	\$4,799	\$6,095	\$0
Dues Subscription	\$120	\$115	\$250	\$664	\$0
Postage	\$6,783	\$4,838	\$7,306	\$9,357	\$0
Rentals	\$43,600	\$65,603	\$46,059	\$61,000	\$0
Contract Printing	\$6,336	\$989	\$8,418	\$9,267	\$0
Training	\$0	\$0	\$0	\$0	\$0
Rental Tech	\$2,618	\$7,750	\$0	\$0	\$0
Supplies	\$0	\$0	\$0	\$0	\$27,185
Other	\$2,171	\$3,933	\$1,139	\$1,270	\$59,180
Total	\$67,705	\$88,692	\$67,971	\$87,653	\$86,365
Legal Library	\$0	\$0	\$0	\$0	\$0
Office Equipment	\$0	\$0	\$0	\$0	\$0
Comp Equipment	\$0	\$0	\$0	\$0	\$0
Other Supplies	\$0	\$0	\$3,235	\$0	\$0
Other	\$0	\$0	\$942	\$0	\$37,767
Total	\$0	\$0	\$4,177	\$0	\$37,767
Transportation	\$0	\$0	\$0	\$520	\$0
Lodging	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$520	\$0
Total Expenditures	\$300,446	\$322,395	\$304,328	\$308,394	\$356,967

Court Expenditures
2006-2010

Perry Township

	2010	2009	2008	2007	2006
Judges	\$58,622	\$57,756	\$56,238	\$54,600	\$54,600
Admin and Staff	\$30,992	\$31,199	\$30,379	\$29,580	\$104,875
Clerks	\$72,570	\$98,643	\$79,906	\$76,498	\$0
Salary Fringe	\$67,916	\$51,939	\$48,293	\$0	\$0
Total	\$230,100	\$239,537	\$214,816	\$160,678	\$159,475

Judge Pro Tem	\$0	\$0	\$0	\$0	\$0
Interpreter Fees	\$460	\$600	\$0	\$360	\$0
Other Non Salaried	\$0	\$0	\$0	\$3,040	\$0
Total	\$460	\$600	\$0	\$3,400	\$0

Phone	\$1,663	\$1,531	\$1,531	\$0	\$0
Dues Subscription	\$0	\$2,954	\$673	\$760	\$0
Postage	\$2,564	\$2,700	\$2,726	\$2,237	\$0
Rentals	\$4,244	\$8,524	\$908	\$3,607	\$0
Contract Printing	\$291	\$841	\$430	\$2,273	\$0
Training	\$0	\$0	\$0	\$0	\$0
Rental Tech	\$3,680	\$949	\$3,200	\$0	\$0
Supplies	\$0	\$0	\$0	\$0	\$0
Other	\$10,161	\$0	\$3,435	\$0	\$0
Total	\$22,603	\$17,499	\$12,903	\$8,877	\$0

Legal Library	\$0	\$0	\$1,480	\$327	\$0
Office Equipment	\$1,539	\$0	\$0	\$0	\$0
Comp Equipment	\$0	\$0	\$6,929	\$0	\$0
Other Supplies	\$0	\$0	\$0	\$2,720	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$1,539	\$0	\$8,409	\$3,047	\$0

Transportation	\$0	\$0	\$0	\$0	\$0
Lodging	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0

Total Expenditures	\$254,702	\$257,636	\$236,128	\$176,002	\$159,475
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Court Expenditures
2006-2010

Pike Township

	2010	2009	2008	2007	2006
Judges	\$70,024	\$64,206	\$61,148	\$58,237	\$56,541
Admin and Staff	\$0	\$0	\$0	\$0	\$253,937
Clerks	\$278,239	\$248,088	\$242,092	\$236,824	\$0
Salary Fringe	\$0	\$0	\$0	\$0	\$0
Total	\$348,263	\$312,294	\$303,240	\$295,061	\$310,478

Judge Pro Tem	\$275	\$575	\$400	\$525	\$350
Interpreter Fees	\$0	\$390	\$520	\$480	\$0
Other Non Salaried	\$0	\$0	\$0	\$0	\$0
Total	\$275	\$965	\$920	\$1,005	\$350

Phone	\$9,940	\$9,797	\$5,351	\$5,548	\$0
Dues Subscription	\$0	\$0	\$0	\$0	\$0
Postage	\$12,000	\$8,168	\$10,000	\$11,508	\$0
Rentals	\$427	\$1,672	\$10,750	\$2,165	\$0
Contract Printing	\$7,234	\$8,233	\$3,417	\$6,870	\$0
Training	\$490	\$450	\$0	\$450	\$0
Rental Tech	\$15,427	\$19,926	\$11,000	\$12,571	\$0
Supplies	\$0	\$0	\$0	\$0	\$0
Other	\$12,208	\$9,531	\$3,100	\$3,828	\$0
Total	\$57,726	\$57,777	\$43,618	\$42,940	\$0

Legal Library	\$2,403	\$1,893	\$1,720	\$1,840	\$0
Office Equipment	\$0	\$0	\$0	\$0	\$0
Comp Equipment	\$0	\$0	\$0	\$0	\$0
Other Supplies	\$9,240	\$12,447	\$7,938	\$7,139	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$11,643	\$14,340	\$9,658	\$8,979	\$0

Transportation	\$0	\$0	\$0	\$0	\$0
Lodging	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0

Total Expenditures	\$417,907	\$385,376	\$357,436	\$347,985	\$310,828
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Court Expenditures
2006-2010

Warren Township

	2010	2009	2008	2007	2006
Judges	\$57,157	\$57,157	\$57,157	\$57,157	\$57,157
Admin and Staff	\$47,099	\$46,175	\$31,209	\$0	\$38,573
Clerks	\$148,514	\$145,602	\$141,361	\$131,976	\$93,374
Salary Fringe	\$0	\$0	\$0	\$0	\$0
Total	\$252,770	\$248,934	\$229,727	\$189,133	\$189,104

Judge Pro Tem	\$0	\$0	\$300	\$0	\$4,110
Interpreter Fees	\$0	\$0	\$0	\$0	\$0
Other Non Salaried	\$0	\$0	\$0	\$4,287	\$0
Total	\$0	\$0	\$300	\$4,287	\$4,110

Phone	\$0	\$0	\$0	\$0	\$0
Dues Subscription	\$0	\$0	\$0	\$340	\$0
Postage	\$4,810	\$1,665	\$5,422	\$8,035	\$0
Rentals	\$0	\$0	\$0	\$0	\$2,796
Contract Printing	\$13,842	\$13,051	\$14,997	\$13,632	\$0
Training	\$0	\$0	\$0	\$0	\$0
Rental Tech	\$0	\$0	\$0	\$0	\$0
Supplies	\$0	\$0	\$0	\$0	\$52,282
Other	\$3,320	\$2,691	\$2,594	\$2,867	\$325
Total	\$21,972	\$17,407	\$23,013	\$24,874	\$55,403

Legal Library	\$0	\$0	\$0	\$177	\$0
Office Equipment	\$0	\$0	\$458	\$0	\$0
Comp Equipment	\$0	\$0	\$0	\$551	\$0
Other Supplies	\$10,118	\$11,424	\$11,166	\$6,177	\$0
Other	\$0	\$0	\$0	\$13,490	\$0
Total	\$10,118	\$11,424	\$11,624	\$20,395	\$0

Transportation	\$0	\$0	\$0	\$0	\$0
Lodging	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0

Total Expenditures	\$284,860	\$277,765	\$264,664	\$238,689	\$248,617
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Court Expenditures
2006-2010

Washington Township

	2010	2009	2008	2007	2006
Judges	\$69,087	\$66,400	\$63,916	\$62,715	\$60,302
Admin and Staff	\$0	\$0	\$0	\$0	\$0
Clerks	\$111,710	\$0	\$106,880	\$0	\$111,144
Salary Fringe	\$148,947	\$0	\$89,171	\$0	\$0
Total	\$329,744	\$66,400	\$259,967	\$62,715	\$171,446
Judge Pro Tem	\$4,090	\$2,600	\$0	\$5,400	\$5,300
Interpreter Fees	\$0	\$0	\$0	\$0	\$0
Other Non Salaried	\$2,511	\$350	\$0	\$0	\$0
Total	\$6,601	\$2,950	\$0	\$5,400	\$5,300
Phone	\$4,634	\$7,692	\$0	\$7,224	\$0
Dues Subscription	\$0	\$0	\$0	\$0	\$0
Postage	\$1,125	\$357	\$0	\$710	\$0
Rentals	\$0	\$107,205	\$0	\$43,331	\$43,057
Contract Printing	\$11,249	\$13,494	\$0	\$0	\$0
Training	\$341	\$0	\$0	\$0	\$0
Rental Tech	\$24,398	\$21,815	\$0	\$0	\$0
Supplies	\$0	\$0	\$0	\$0	\$12,420
Other	\$12,879	\$11,182	\$0	\$0	\$0
Total	\$54,626	\$161,745	\$0	\$51,265	\$55,477
Legal Library	\$0	\$26,494	\$0	\$0	\$0
Office Equipment	\$0	\$3,782	\$0	\$0	\$0
Comp Equipment	\$335	\$1,264	\$0	\$10,038	\$0
Other Supplies	\$7,581	\$6,466	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$7,916	\$38,006	\$0	\$10,038	\$0
Transportation	\$0	\$0	\$0	\$0	\$0
Lodging	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$5,455	\$0	\$0	\$0
Total	\$0	\$5,455	\$0	\$0	\$0
Total Expenditures	\$398,887	\$274,556	\$259,967	\$129,418	\$232,223

Court Expenditures
2006-2010

Wayne Township

	2010	2009	2008	2007	2006
Judges	\$59,007	\$56,737	\$56,737	\$52,457	\$52,457
Admin and Staff	\$0	\$82,428	\$0	\$0	\$69,949
Clerks	\$186,531	\$136,880	\$248,444	\$157,141	\$120,086
Salary Fringe	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$82,128	\$43,193	\$0
Total	\$245,538	\$276,045	\$387,309	\$252,791	\$242,492
Judge Pro Tem	\$200	\$300	\$300	\$0	\$0
Interpreter Fees	\$0	\$0	\$0	\$0	\$0
Other Non Salaried	\$0	\$0	\$0	\$0	\$0
Total	\$200	\$300	\$300	\$0	\$0
Phone	\$0	\$0	\$0	\$0	\$0
Dues Subscription	\$0	\$0	\$0	\$0	\$0
Postage	\$0	\$0	\$0	\$0	\$0
Rentals	\$0	\$0	\$0	\$0	\$0
Contract Printing	\$0	\$12,000	\$12,000	\$0	\$0
Training	\$0	\$0	\$0	\$0	\$0
Rental Tech	\$0	\$15,307	\$0	\$0	\$0
Supplies	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$27,200	\$0	\$0
Total	\$0	\$27,307	\$39,200	\$0	\$0
Legal Library	\$0	\$0	\$0	\$0	\$0
Office Equipment	\$0	\$0	\$0	\$0	\$0
Comp Equipment	\$0	\$0	\$27,300	\$0	\$0
Other Supplies	\$0	\$39,200	\$39,200	\$0	\$0
Other	\$0	\$0	\$55,300	\$0	\$0
Total	\$0	\$39,200	\$121,800	\$0	\$0
Transportation	\$0	\$0	\$0	\$0	\$0
Lodging	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0
Total Expenditures	\$245,738	\$342,852	\$548,609	\$252,791	\$242,492

Court Expenditures
2006-2010

Franklin Township

2010	2009	2008	2007	2006
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Judges	\$66,956	\$66,956	\$65,005	\$63,112	\$60,684
Admin and Staff	\$0	\$0	\$0	\$0	\$21,837
Clerks	\$108,372	\$108,777	\$107,143	\$110,675	\$80,403
Salary Fringe	\$75,000	\$93,000	\$87,384	\$62,701	\$0
Total	\$250,328	\$268,733	\$259,532	\$236,488	\$162,924

Judge Pro Tem	\$0	\$0	\$0	\$0	\$0
Interpreter Fees	\$0	\$0	\$0	\$0	\$0
Other Non Salaried	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0

Phone	\$0	\$0	\$0	\$0	\$0
Dues Subscription	\$0	\$0	\$0	\$0	\$0
Postage	\$0	\$0	\$0	\$0	\$0
Rentals	\$0	\$11,000	\$11,000	\$8,679	\$0
Contract Printing	\$0	\$0	\$0	\$0	\$0
Training	\$0	\$0	\$0	\$0	\$0
Rental Tech	\$0	\$0	\$0	\$0	\$0
Supplies	\$0	\$0	\$0	\$0	\$12,480
Other	\$0	\$20,000	\$22,500	\$19,970	\$26,493
Total	\$0	\$31,000	\$33,500	\$28,649	\$38,973

Legal Library	\$0	\$0	\$0	\$0	\$0
Office Equipment	\$0	\$0	\$0	\$0	\$0
Comp Equipment	\$0	\$0	\$0	\$0	\$0
Other Supplies	\$0	\$0	\$0	\$16,564	\$0
Other	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$16,564	\$0

Transportation	\$0	\$0	\$0	\$0	\$0
Lodging	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$18,000	\$0	\$0
Total	\$0	\$0	\$18,000	\$0	\$0

Total Expenditures	\$250,328	\$299,733	\$311,032	\$281,701	\$201,897
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**Marion County Small Claims Courts
Filings and Dispositions**

Marion County Small Claims Courts Compared to State Averages

	2010	
	Filed	Disposed
Center Township	14,021	19,550
Decatur Township	7,718	8,516
Lawrence Township	7,226	5,489
Perry Township	4,542	3,644
Pike Township	8,277	8,282
Warren Township	7,082	4,475
Washington Township	6,660	5,588
Wayne Township	7,594	6,759
Franklin Township	6,461	5,343

Marion County Total	69,581	67,646
State Total	276,295	282,006

	Method of Disposition								
	Bench Trial	Bench Disposition	Dismissed	Default	Other	Bench Trial	Bench Disposition	Dismissed	Default
Center Township	23%	12,998	66%	1,190	6%	774	4%	66	0%
Decatur Township	22%	2,244	26%	1,323	16%	2,888	34%	217	3%
Lawrence Township	13%	674	12%	2,049	37%	2,041	37%	19	0%
Perry Township	4%	452	12%	899	25%	2,136	59%	0	0%
Pike Township	14%	0	0%	2,747	33%	4,378	53%	0	0%
Warren Township	15%	1,087	24%	1,045	23%	1,658	37%	0	0%
Washington Township	11%	735	13%	2,565	46%	1,303	23%	376	7%
Wayne Township	11%	2,325	34%	3,247	48%	382	6%	45	1%
Franklin Township	1%	813	15%	1,128	21%	3,331	62%	0	0%

Marion County Total	16%	21,328	32%	16,193	24%	18,891	28%	723	1%
State Total	12%	59,199	21%	82,293	29%	101,134	36%	4469	2%

	2009	
	Filed	Disposed
Center Township	13,637	12,099
Decatur Township	8,743	9,770
Lawrence Township	7,145	7,113
Perry Township	4,829	4,337
Pike Township	9,726	9,455
Warren Township	7,002	5,903
Washington Township	5,887	6,194
Wayne Township	7,018	7,025
Franklin Township	5,231	2,686

	Method of Disposition								
	Bench Trial	Bench Disposition	Dismissed	Default	Other	Bench Trial	Bench Disposition	Dismissed	Default
Center Township	16%	7,846	65%	1,587	13%	705	6%	2	0%
Decatur Township	11%	2,483	25%	1,344	14%	4,430	45%	439	4%
Lawrence Township	3%	634	9%	2,740	39%	3,497	49%	0	0%
Perry Township	5%	355	8%	1,369	32%	2,380	55%	5	0%
Pike Township	15%	0	0%	2,964	31%	5,077	54%	0	0%
Warren Township	4%	588	10%	1,732	29%	3,334	56%	0	0%
Washington Township	8%	934	15%	2,521	41%	2,169	35%	82	1%
Wayne Township	7%	2,197	31%	3,069	44%	1,241	18%	0	0%
Franklin Township	2%	174	6%	977	36%	1,436	53%	56	2%

Marion County Total	69,218	64,582
State Total	272,602	270,909

Marion County Total	10%	15,211	24%	18,303	28%	24,269	38%	584	1%
State Total	10%	52,196	19%	73,017	27%	109,642	40%	298	0%

	2008	
	Filed	Disposed
Center Township	15,122	13,351
Decatur Township	8,782	9,500
Lawrence Township	7,977	7,970
Perry Township	5,194	5,064
Pike Township	10,009	11,063
Warren Township	7,200	6,342
Washington Township	5,891	4,489
Wayne Township	7,563	7,582
Franklin Township	6,173	6,772

Marion County Total	73,911	72,133
State Total	289,925	288,586

	Method of Disposition								
	Bench Trial	Bench Disposition	Dismissed	Default	Other				
2,403	18%	1,385	10%	2,642	20%	6,874	51%	47	0%
704	7%	2,853	30%	1,462	15%	4,481	47%	0	0%
455	6%	762	10%	3,441	43%	3,312	42%	0	0%
242	5%	311	6%	1,765	35%	2,725	54%	21	0%
1,864	17%	0	0%	3,381	31%	5,818	53%	0	0%
243	4%	552	9%	2,544	40%	3,003	47%	0	0%
86	2%	1,668	37%	2,637	59%	82	2%	16	0%
1,360	18%	538	7%	3,671	48%	2,012	27%	1	0%
137	2%	474	7%	2,209	33%	3,927	58%	25	0%

7,494	10%	8,543	12%	23,752	33%	32,234	45%	110	0%
31,591	1.1%	47,542	16%	86,385	30%	117,925	41%	3,651	1%

	2007	
	Filed	Disposed
Center Township	14,236	13,400
Decatur Township	5,834	5,411
Lawrence Township	7,460	7,499
Perry Township	5,656	4,978
Pike Township	9,691	10,738
Warren Township	6,974	6,094
Washington Township	6,113	5,343
Wayne Township	8,351	8,369
Franklin Township	7,874	6,669

Marion County Total	72,189	68,501
State Total	281,530	274,490

	Method of Disposition								
	Bench Trial	Bench Disposition	Dismissed	Default	Other				
1,462	11%	1,009	8%	3,511	26%	7,411	55%	7	0%
1,026	19%	1,121	21%	1,000	18%	2,264	42%	0	0%
487	6%	986	13%	2,882	38%	3,144	42%	0	0%
335	7%	245	5%	1,638	33%	2,642	53%	118	2%
1,551	14%	0	0%	3,113	29%	6,074	57%	0	0%
204	3%	751	12%	2,488	41%	2,651	44%	0	0%
155	3%	199	4%	3,550	66%	1,439	27%	0	0%
1,310	16%	1,755	21%	3,489	42%	1,815	22%	0	0%
179	3%	0	0%	2,059	31%	4,429	66%	2	0%

6,709	10%	6,066	9%	23,730	35%	31,869	47%	127	0%
32,792	12%	39,147	14%	83,898	31%	114,360	42%	3,280	1%

	2006	
	Filed	Disposed
Center Township	11,612	10,227
Decatur Township	4,971	4,500
Lawrence Township	8,007	7,997
Perry Township	5,655	4,674
Pike Township	9,796	12,841
Warren Township	8,877	9,725
Washington Township	5,830	4,305
Wayne Township	10,310	10,639
Franklin Township	6,796	8,194

Marion County Total	71,854	73,102
State Total	282,943	280,447

	Method of Disposition											
	Bench Trial		Bench Disposition		Dismissed		Default		Other			
	975	10%	885	9%	3,205	31%	5,150	50%	12	0%		
	1,412	31%	1,104	25%	978	22%	1,006	22%	0	0%		
	462	6%	2,077	26%	3,140	39%	2,318	29%	0	0%		
	503	11%	73	2%	1,568	34%	2,340	50%	190	4%		
	1,491	12%	0	0%	3,045	24%	6,157	48%	2,148	17%		
	2,382	24%	978	10%	2,704	28%	3,661	38%	0	0%		
	165	4%	142	3%	2,926	68%	1,072	25%	0	0%		
	574	5%	774	7%	3,517	33%	5,477	51%	297	3%		
	168	2%	0	0%	1,996	24%	3,611	44%	2,419	30%		

	8,132	11%	6,033	8%	23,079	32%	30,792	42%	5,066	7%
	37,746	13%	37,395	13%	86,566	31%	109,042	39%	9,698	3%

Marion County Small Claims Courts
Judicial "Need"
2006-2010

Center Township
Decatur Township
Lawrence Township
Perry Township
Pike Township
Warren Township
Washington Township
Wayne Township
Franklin Township

	2010		2009		2008		2007		2006	
	Filings	Judicial "Need"								
Center Township	14,021	2.26	13,637	2.20	15,122	2.44	14,236	2.29	11,612	1.87
Decatur Township	7,718	1.24	8,743	1.41	8,782	1.42	5,834	0.94	4,971	0.80
Lawrence Township	7,226	1.16	7,145	1.15	7,977	1.29	7,460	1.20	8,007	1.29
Perry Township	4,542	0.73	4,829	0.78	5,194	0.84	5,656	0.91	5,655	0.91
Pike Township	8,277	1.33	9,726	1.57	10,009	1.61	9,691	1.56	9,796	1.58
Warren Township	7,082	1.14	7,002	1.13	7,200	1.16	6,974	1.12	8,877	1.43
Washington Township	6,660	1.07	5,887	0.95	5,891	0.95	6,113	0.99	5,830	0.94
Wayne Township	7,594	1.22	7,018	1.13	7,563	1.22	8,351	1.35	10,310	1.66
Franklin Township	6,461	1.04	5,231	0.84	6,173	1.00	7,874	1.27	6,796	1.10

Distribution of Small Claims Court Fees

Marion County Township Small Claims Courts

Fee	Amount	Recipient
Township docket fee + 45% of infraction/ordinance fee	\$37	Township
Service fee	\$13 (+\$13 for each additional party served in person or by certified mail)	Township Constable
Document storage fee	\$2	Marion County Clerk
Automated record-keeping fee	\$5	State
Public defense administration fee	\$5	State
Judicial insurance adjustment fee	\$1	State
Judicial salaries fee (\$14 total)	\$10.50	State
Judicial salaries fee (\$14 total)	\$3.50	Township
Court administration fee (\$5 total)	\$3	State
Court administration fee (\$5 total)	\$2	Township

Small Claims Courts in Other Counties

Fee	Amount	Recipient
Small Claims Filing Fee (\$35 total)	\$24.50	State
Small Claims Filing Fee (\$35 total)	\$9.45	County Auditor
Small Claims Filing Fee (\$35 total)	\$1.05	Municipality
Service fee for service by certified mail	\$10 (+\$10 for each additional party served)	County Auditor
Service fee for service by the sheriff	\$13	County Auditor
Document storage fee	\$2	County Clerk
Automated record-keeping fee (\$5 total)	\$4 if the county does not operate under the State's automated judicial system, otherwise \$5	State
Automated record-keeping fee (\$5 total)	\$1 if the county does not operate under the State's automated judicial system, otherwise \$0	County Auditor
Public defense administration fee	\$5	State
Judicial insurance adjustment fee	\$1	State
Judicial salaries fee	\$14.00	State
Court administration fee	\$5	State

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 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 Defendants 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 re-lease 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.

**REPORT #1 ON LANDLORD-TENANT COURT
PROCEEDINGS IN INDIANA**

February 2012

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and

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“The mold in Mary Davis’s rental had festered from bedroom window sills, crawled along dining room walls, and collected in stainable globs in her bathtub. For months, the foster mother said, she called her landlord and his wife to report the problem growing in her home. Unfamiliar with legal procedures and her rights, Davis struggled . . . under cross-examination. . . . During Davis’s confusing cross-examination, riddled with comments and rambling denials, the landlord’s attorney repeatedly interrupted; at one point, the attorney asked Davis to ‘speak properly.’”

Crystal Carreon¹

“If the landlord initiates possession of real estate proceedings, the court focuses solely on the breach of contract instead of looking to surrounding circumstances. If shelter is considered a basic human right, this unforgiving legal rule is at odds with justice.”

Devin Hillsdon-Smith²

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing . . .”.

Article 11, International Covenant on Economic, Social and Cultural Rights

“ . . . we look forward to a world founded upon four essential human freedoms, [including] . . . freedom from want . . .”

President Franklin Delano Roosevelt,
State of the Union Address, January 1941

¹ 1L student, IU Robert H. McKinney School of Law, October 2011. In general, student’s names have been omitted, save for a few instances where their names have been used with their permission. The students’ original papers all are on file with Professor Florence Wagman Roisman at the IU Robert H. McKinney School of Law. The tenant’s name has been changed; minor corrections to punctuation have been made.

² 1L student, IU Robert H. McKinney School of Law, October 2011.

TABLE OF CONTENTS

Introduction: Background of the Project	3
Acknowledgments	5
The Report	
I. BASIC DUE PROCESS ISSUES	6
A. Judgments Entered by Clerks	6
B. Abusive Behavior by Court Staff	6
C. Treatment of People with Disabilities	6
1. Access to the Courts for People with Disabilities	6
2. Substantive Treatment of People with Disabilities	7
D. Treatment of People with Limited English Proficiency	8
1. Access to the Courts for People with Limited English Proficiency	8
2. Substantive Treatment of People with Limited English Proficiency ...	9
II. UNSATISFACTORY RESOLUTION OF HEALTH ISSUES	10
A. Illustrations of Ineffective Responses to Tenants' Claims	10
B. Improved Responses to These Problems	11
1. The Law	12
a. The Implied Covenant of Quiet Enjoyment and the Doctrine of Constructive Eviction.	13
b. The Implied Warranty of Habitability	13
2. How Tenant Complaints Should be Addressed	15
III. SPECIFIC RECOMMENDATIONS	16
A. Tenant Information	16
B. Court Materials: Uniform Standards, Forms, and Websites Among the Township Courts; A Bench Book	17
C. In Court	18

Introduction: Background of the Project

In the Fall semester of 2010, second year students in the Evening Division at the Indiana University Robert H. McKinney School of Law satisfied one of the requirements for their Property course by visiting a landlord-tenant court and writing a report about the experience. Most of the students went to the Marion County Center Township landlord-tenant court, and the reports identified a number of significant problems at that court and others. At the end of the semester, five of the students joined their professor in a project designed to address these issues. They worked through the spring and summer and then, joined by a sixth student, through the Fall of 2011.

The issues considered included these:

- access to the court and court proceedings for people with disabilities;
- access to the court and court proceedings for people with limited English proficiency;
- providing information in the summons/complaint and before the court proceedings about substance, procedure, and legal and housing help available;
- changing the substance of the proceedings so that tenant claims of bad conditions would be considered at the same time as landlord claims of non-payment of rent;
- the application of the Protecting Tenants at Foreclosure Act; and
- the fate of tenants who are evicted because of orders from a health department or comparable agency.

One underlying concern with all small claims courts is that many of the litigants are not represented by legal counsel. The lack of legal representation is compounded by the other issues listed above. As one student noted, “[the judge] told us that . . . the average person doesn’t know what they are doing in a court, which slows the process.”³ While observing landlord-tenant court, another student noticed that “[n]one of the tenants I observed were represented by counsel.”⁴

Some of the six students were volunteers; others did this work for credit under the “ACE” – Advanced Course-Related Experience – program. The project was named “ACE - L&T.” While we took into account activities in other states and elsewhere in Indiana, our focus was on Marion County and its unique system of nine township small claims (including landlord-tenant) courts.

The ACE activities included legal and practical research into many issues and the operations of different landlord-tenant and housing courts. We met with three judges – the Honorable Michelle Smith Scott, judge of the Center Township Small Claims Court; the Honorable Garland Graves, judge of the Warren Township Small Claims Court; and the Honorable Louis F. Rosenberg, the Circuit Court judge whose responsibilities include oversight of the township courts. We also met with the Lawrence Township Trustee, Russell Brown,

³ 1L student, IU Robert H. McKinney School of Law, October 2011.

⁴ 1L student, IU Robert H. McKinney School of Law, October 2011.

Esquire. We consulted with advocates from Indiana Legal Services, Inc. (ILSI) and the Neighborhood Christian Legal Clinic (NCLC). We consistently drew on the experience and wisdom of Professor Fran Quigley and his work with the Health and Human Rights Clinic at the IU Robert H. McKinney School of Law.

In the Fall of 2011, two additional groups of students were required by their professors to visit landlord-tenant courts and to report on what they found there. With the benefit of the work already done through the ACE project, these students were asked particularly to focus on the issues already delineated and to attend, if possible, courts other than that in Center Township, from which we already had a good number of reports. Students in Professor Florence Roisman's day class and Professor Carlton Waterhouse's evening class wrote such reports.

What follows is a report on the issues we have identified to date and a set of recommendations. We regard this as a very preliminary summary offered for purposes of further discussion. In particular, because the reports on landlord-tenant court proceedings are from first and second year students who may not fully appreciate what they have seen or heard, we understand that some of the reports may be inaccurate, and we hope that officials of those courts will give us accurate information so that we may correct those errors. Most students visited Center Township; a fair number went to Perry and Lawrence Townships; a few went to other townships or other counties.

Marion County is divided into nine townships, and, unique in Indiana, each township has its own small claims court, and landlord-tenant proceedings are part of the small claims courts' jurisdiction. A tenant-defendant may file a demand for trial by jury, thus causing the case to be removed to Superior Court.⁵ A party who loses in small claims court may appeal to Superior Court and secure a trial *de novo*.⁶

The nine township small claims courts hear approximately 70,000 cases per year, about half of which involve landlord-tenant matters. Most of those 35,000 landlord-tenant cases are filed in Center Township. Cases must be filed in the township in which the property is located.⁷ The small claims court judges are elected for four-year terms.⁸ All of them are part-time judges except for the judge in Center Township, who is a full-time judge. The court staff and facilities are provided by the township trustee out of the township's budget.⁹

⁵ Indiana Rules of Court, Small Claims, Rule 2(B)(10).

⁶ Marion Superior Court Civil Rules, LR49-TR79.1-228(C).

⁷ I.C. 33-34-3-1 (c)

⁸ I.C. 34-34-2-1

⁹ I.C. 33-34-6

Acknowledgements

This report owes its existence to the hard work, dedication, determination, generosity, and skill of the six ACE students: Alison Becker, Anthony Benitez, Brienne Delaney, Bethany Nine-Lawson, Kim Opsahl, and Aida Ramirez. Their willingness to spend a year trying to improve landlord-tenant court process and substance has been inspiring. Any errors or misjudgments in this report are my responsibility, but credit belongs to the six ACE students, particularly Ms. Delaney, who provided substantial assistance in editing this document.

The counsel and work of Professor Fran Quigley of the Indiana University Robert H. McKinney School of Law have been invaluable. The students who recorded their observations of landlord-tenant court provided the foundation for this report.

We offer sincere thanks to the judges and court staff, all of whom were extraordinarily courteous and helpful to the students, welcoming them as potential colleagues. We all appreciate, too, the courteous and respectful manner in which all the judges and almost all the court staff treated the litigants and other members of the public.

Florence Wagman Roisman

I. BASIC DUE PROCESS ISSUES.

A. Judgments Entered by Clerks.

From the students' reports, it appears that in one or more courts default judgments are being entered by a clerk before the judge enters the courtroom. We were told by ILSI staff that this had occurred in another court and the practice had been stopped after ILSI attorneys discussed the matter with the judge. Students may have observed this in Perry Township and in Vanderburgh County. No judgments – default or otherwise – ever should be entered by anyone other than a judge.¹⁰

B. Abusive Behavior by Court Staff.

Although the students uniformly reported that court staff were courteous to them, there were occasional reports of court staff in Center Township being abusive to litigants. Thus, for example, one student reported that a Center Township constable “yells” at people not to sit in the front row, and suggested that a sign indicate that the front row is reserved. Other students commented on intimidating behavior: one wrote that “the constables glared at everyone”; another, that “it made me feel unwelcome and I left!” Several students observed a situation where a witness was testifying that a landlord had left a letter saying “Get your shit out.” As one student reported:

As soon as the word ‘shit’ left her mouth, despite the fact that she was allegedly repeating what had been written by the landlord, the constables both stepped forward and shouted, “that kind of language will NOT be used in this courtroom!” While she was defending her choice of words by claiming that she was merely recounting what had been left on the door by the landlord, the constable was escorting her out by the arm.

C. Treatment of People with Disabilities.

While equal treatment for people with disabilities is required by the Americans with Disabilities Act (ADA) and the Fair Housing Act, it also is a fundamental requirement of due process and therefore is discussed here. We consider two disability-related issues: access to the courts and the substantive treatment of people with disabilities.

1. Access to the Courts for People with Disabilities.

At least some of the court facilities present impediments to persons with disabilities, including mobility, vision, and hearing impairments. Thus, for example, one student reported that

the courtroom in Center Township would be extremely difficult to access for a person

¹⁰ This issue's raised by a Sullivan County case now before the Indiana Court of Appeals, Reynolds v. Capps, Cause No.: 77A05-1110-SC-00567.

with physical disabilities. It is located in a corner room in the basement that is accessed through a narrow office area. All of the chairs in the room are folding chairs, and the aisles are also narrow. The judge's bench is also tall, and there are no microphones in the room. It would be very difficult for a person using a wheelchair to maneuver the courtroom, and to see the judge.

Another student noted that the Center Township courtroom was significantly overcrowded, which poses a problem for people with disabilities and for others as well.

In Perry Township, a student had to consult Google maps to find the ramp; s/he wrote:

on immediate observance of the building it is not readily visible. A sign indicating where the handicapped ramp is might be helpful. I could not see any buttons available inside the building or outside of the small claims court office which would allow a disabled person to automatically open the doors.

Another student reported that the building was hard to find, even with printed directions; s/he said that there is no sign for the court on East Thompson Road. Additionally, in Washington Township, a student recommended that a sign for the court be placed on Keystone Avenue.

A student who attended Elkhart Superior Court 3, in Goshen, Indiana, reported that "... the courtroom was very small and the bailiff requested that people wait outside ... the courtroom until it was time for their case to be heard." Another reported that there were not enough seats in Vanderburgh County small claims court in Evansville Civic Center.

Each township court should have a disability assessment performed. Pursuant to the ADA, each public entity is required to perform a self-assessment of its ADA compliance. This process must afford interested persons an opportunity "to participate in the self-evaluation process by submitting comments."¹¹ The trustees and small claims courts must assure compliance with these provisions, but are not necessarily required to implement the recommendations brought forward in the assessment.

We have identified volunteers who will perform these assessments for the township courts. This generous offer should be accepted swiftly. Once the assessments have been completed, the judges and township officials can decide what changes to make and on what timetable. In a perfect world, all of these changes would be made immediately. However, we understand that change will likely need to take place over time. The first step is obtaining an assessment to better understand the task at hand.

2. Substantive Treatment of People with Disabilities.

Several students observed cases in which a tenant had, or claimed to have, a disability, and asked for some accommodation, such as more time within which to move. Here is one

¹¹ U.S. Department of Justice ADA Title II Regulations, 28 C.F.R. §35.105 (2010).

example, from Center Township. In this case, it appeared that rent had been paid through the end of the lease term, October 31, but the landlord claimed he wanted possession on that date in order to make needed repairs. The tenant reportedly said

he is a disable[d] war veteran on a fixed income. His mobility is limited and is supported with the use of a cane. His disability and limited mobility make moving residences and his personal property a heavier burden than it would be without his disability and limited mobility.

The tenant's request for additional time was denied; on October 25, he was ordered to vacate by November 1.

Under the federal Fair Housing Act, persons with disabilities are entitled to "reasonable accommodations" that certainly might include additional time within which to move.¹² Such persons also may be entitled to assistance in securing additional income or alternative housing. Because most tenants with disabilities are unlikely to know about their rights, courts should be alert to such situations and should, at the very least, encourage tenants with disabilities to secure appropriate legal and housing advice.

D. Treatment of People with Limited English Proficiency.

1. Access to the Courts for People with Limited English Proficiency.

This, too, is fundamentally a due process issue, although there maybe statutes and court rules that require that certified interpreters be available to litigants whose proficiency in English is limited. Students observed very different approaches to language problems. In some cases, it appears that certified interpreters were employed. In Perry Township, however, several students observed a case in which the person representing the plaintiff

told Judge Spears that the tenant spoke zero English, and requested that the case be pushed back until an interpreter could be brought to court. . . . The landlord stated that he had a man working at the country club that spoke Spanish and could be used, which the judge said would be fine.

As a student observed,

It appeared that [the tenant] did not completely understand who the interpreter would be for the following hearing, and it is almost certain that he did not know that it would be provided by the plaintiff. Since he did not know this, it is unreasonable to expect that he would be able to object if the need arose.

"Judge Spear even commented that in the surrounding area there is a large population of minorities, and many have been here for a long time"; he noted that "Chin interpreters were

¹² 42 §USC 3604(f)(3)(B).

needed fairly often because there was a decent-sized ethnic Chin Burmese refugee population in Marion County.” Nonetheless, he favors volunteer interpreters because of court’s budget. The students understood him to say

that it isn’t worth it, as a budgetary reason, to keep an interpreter at the courthouse. They mainly look for volunteers to help, as the judge told us he used to have a volunteer fireman that spoke Spanish come down on court days. Judge Spear said there is an official list of interpreters that he can call upon, for most all languages, but they often charge.

Another student reported that Judge Spear had said that in one case, one party “spoke an obscure language and the nearest interpreter was in Chicago. He encouraged the parties to settle in order to avoid paying for the interpreter.”

A student concluded:

The fact that the court was asking law students to volunteer to interpret for the first case; or just letting the landlord bring an employee, shows that the court must really be tight on money or just not concerned with quality of the interpreter.

In Warren Township, a student noted that “there were a number of Hispanic defendants for the cases, and not a single court interpreter in sight.” In Wayne Township, students saw a Hispanic tenant who “had a difficult time trying to keep up with what was happening to her.” Although she “came to court with her children and another woman,” “she wasn’t allowed to defend herself or even speak to her situation.”

2. Substantive Treatment of People with Limited English Proficiency.

Some students saw a situation in which a landlord dealt in English only with a tenant whose understanding of English was limited; this led to confusion and, ultimately, the eviction of the tenant, though she had been trying to make her rent payments. This was in Warren Township, before a *pro tem* judge:

The tenant, who had brought her child to the proceeding, . . . could not afford all of what was owed, and despite [her] trying to pay part of it, the judge ordered her to leave the property. . . . The woman was visibly upset and said that was not possible for her because of all her small children. She had made part payments, which the landlord had accepted – “accidentally,” he said. The tenant “was not sure why the landlord was refusing her payments because she was under the impression that she was allowed to make payment installments toward the overall overdue balance. The landlord admitted the letters written to her were in English and his staff had made no real effort to fix the language barrier.

II. UNSATISFACTORY RESOLUTION OF HEALTH ISSUES.

Many students observed cases involving serious health issues, including mold, bedbugs, and lack of heat. In several of these cases, the tenants supported their complaints with photographs, reports from health or housing officials, or other witnesses. In virtually all of these cases, the judge gave the landlord a judgment of possession; in none of these cases did a judge give the tenant effective relief. Moreover, in none of these cases was there any indication that the judge took any other action that might lead to elimination of the health problem – the mold, the bedbugs, or the absence of heat (in one case, the literal, and apparently uncontested, absence of a furnace!). In other words, the court did not impose on the landlord any penalty for the unhealthy, unlawful conditions and did not take any step to have the unhealthy, unlawful conditions eliminated.

The instances observed by the students are only the tip of an iceberg. These students happened to be in court when these tenants raised the health issues; more significantly, it is likely that most tenants who experience these health problems do not go to court to complain about them, either because they have no reason to believe that this would have any impact or because they cannot afford the time or the money to go to court.

We provide below some illustrations of what students observed, and then suggestions for improved handling of these claims.

A. Illustrations of Ineffective Responses to Tenants' Claims.

In Lawrence Township, several students heard complaints about mold:

The mold in Mary Davis's rental had festered from bedroom window sills, crawled along dining room walls, and collected in stainable globs in her bathtub. For months, the foster mother said, she called her landlord and his wife to report the problem growing in her home.¹³

Davis "called all the time"; although there were "minor repairs over the months, Davis said the landlord told her that the mold was dirt." The Marion County Health Department issued violation notices.

Davis said "that she stopped paying rent when she was forced to move out due to the severity of the living conditions."¹⁴ The landlord sued, seeking \$1,165 for rent, late fees, court filings, and cleanup costs. Davis sought a refund in rent. In court, the landlord was represented by counsel; Davis represented herself. She brought photos of the mold and the health department report. She said she had purposefully stopped paying rent and moved out before her lease expired.

¹³ The tenant's name has been changed; minor corrections to punctuation have been made.

¹⁴ This statement is from the report of the second student who heard this case.

Unfamiliar with legal procedures and her rights, Davis struggled . . . under cross-examination. . . . During Davis's confusing cross-examination, riddled with comments and rambling denials, the landlord's attorney repeatedly interrupted; at one point, the attorney asked Davis to "speak properly."

The *pro tem* judge granted judgment for the landlord for \$1,165. He then "asked a few more questions of Davis, and then told her about 'constructive eviction.'" He told her "that had she moved out earlier, she would not have been liable." Concluding the session, he reduced the judgment to \$340.00, a portion of the rent due for December.

Although the tenant had given oral notice in December that she was moving out because of the mold, the judge initially held her responsible for paying rent for January and February and part of March. After the case had been decided, the judge told law students that if the tenant had provided written notice before she moved out, "then she could have a case for constructive eviction and could even get money back for previous months of paid rent. But because she moved out when her lease expired . . ., she had to pay for the unpaid rent for two last months."¹⁵

In Washington Township, too, students observed a case involving mold. The tenant said he had discovered the mold shortly after moving in and informed the landlord, who did not get rid of the mold. The tenant said he

hired a professional . . . who informed him that the mold was throughout the apartment and would be very expensive to get rid of. The tenant then ceased paying rent and left some possessions at his apartment, but began residing with a friend. After several months of non-payment, the landlord initiated this action for possession

Judge Steven Poore gave judgment for the landlord. Students reported that Judge Poore said that mold is "one of the most common tenant defenses" in Washington Township because "much of the township rests on marshland." They reported that Judge Poore said that many tenants argue, in effect, *res ipsa loquitur*: "prior to moving in . . . she or he did not have any health problems, but after moving in, she or he discovered mold and thereafter experienced health problems." The students understood Judge Poore to say that he does not usually allow these defenses.

In Allen County, students observed a case where a tenant said she had vacated the property because of bedbugs; Magistrate Judge Jennifer DeGrootte granted possession to the landlord and set a date for a damages hearing. Acting in a way not observed by students attending any other court, Judge DeGrootte gave the tenant a list of legal resources in Allen County and encouraged the tenant to consult with the Allen County Bar Association.

B. Improved Responses to These Problems.

The inadequate responses to these health threats are related to, but a special case of, the general treatment of tenant complaints of substandard conditions. In general, if a tenant

¹⁵ The student reports leave unclear whether the judge ultimately amended this.

complains about any substandard conditions and says that s/he has complained to the landlord (and sometimes a government agency) without effect and has withheld rent in an effort to induce the landlord to make the repairs or to pay for services the landlord should have provided, the judge will grant a judgment of possession to the landlord and, at most, set a future date for a damages hearing to consider the tenant's claims. Some judges apparently tell tenants that their complaints cannot be heard even in this bifurcated form, that tenants must file separate actions in order to pursue their claims. This bifurcated procedure is not consistent with existing law.

1. The Law.

Judge Steven Spear of Perry Township, who generously made time to talk to the law students who visited his court, seemed to speak for many judges when he said (as reported by several students) that "there is no defense for not paying rent."¹⁶ Reportedly, Judge Spear said that if there is an issue with regard to conditions at the property, "the tenant has two options. The tenant can move out, and the landlord may be subject to damages, or the tenant can remain in the dwelling, but he or she must pay rent. . . . [T]enants cannot refuse to pay rent and continue to live in the dwelling." As related by several students, Judge Spear discussed

hypothetical cases where the tenant refused to pay rent because the properties they were occupying were infested with black mold, lacked heating in winter or lacked air conditioning in the summer. The tenants would argue that the landlord had breached their contract first because they refused to correct problems with the property, *even if it were spelled out in the contract that the duty to correct these deficiencies rested with the landlord*. The tenants would then refuse to pay rent and the landlords would file suit to evict the tenants. Judge Spear made it clear that this argument was no defense for not paying rent under Indiana law. For a tenant to acquire any remedy, they would have to vacate the property and then file suit against the landlord to recover. [Emphasis added.]

Judge Spear . . . [said that] the law was purposely set up to favor landlords for policy reasons. Judge Spear noted that other states, namely New York, have a legal situation that is not favorable to landlords. This creates less incentive to become a landlord, meaning there are fewer properties that are available, driving up the price of property that is available. By having a legal environment that favors landlords, Indiana has a generous amount of reasonably-priced property that is available.

Two different situations are involved in this discussion: first, where the lease agreement expressly imposes on the landlord a duty that the landlord has breached – e.g., to provide heat or air-conditioning or to avoid and remove mold; second, where the lease does not expressly impose such a duty. In the first case, it is clear that the landlord has an express, contractual duty; the only question is whether the tenant's duty to pay rent is dependent upon, or independent of, the landlord's express contractual duty (to provide heat, air-conditioning, mold-avoidance or

¹⁶ A student reported that a Johnson County judge said that he sometimes reduces or eliminates rent for tenants because "the landlord is required to provide a habitable environment or he is not entitled to collect rent." Also, as indicated below, at least two township judges reportedly said that they allow repair-and-deduct claims.

removal, or other services). While there is an old common law rule that covenants in a lease, unlike covenants in a contract, are independent of each other, this common law rule has been rejected in the vast majority of U.S. jurisdictions, by all the leading treatises, and by the Restatement of Property. The notion that lease covenants are independent (although contract covenants long have been held to be dependent) was rejected by the Indiana Court of Appeals in *Breezewood Management Co. v. Maltbie*, 411 N.E.2d 670 (Ind. App. 1980) and rejected by the Indiana Supreme Court in its decision recognizing an implied-in-fact warranty of habitability in residential leases.¹⁷ Thus, in the hypothetical case where the contract “spelled out . . . that the duty to correct these deficiencies rested with the landlord,” the tenant certainly should be able to defend against a claim for non-payment by arguing that the landlord’s failure to perform his express duty eliminated or reduced the tenant’s obligation to pay rent.

Where the lease does not impose on the landlord an express duty with respect to conditions, two doctrines come into play: constructive eviction and implied covenants. They should be analyzed separately.

a. The Implied Covenant of Quiet Enjoyment and the Doctrine of Constructive Eviction.

Like virtually all United States jurisdictions, Indiana recognizes that every residential lease includes an implied-by-law covenant of quiet enjoyment and that a landlord breaches this if s/he actually or constructively evicts a tenant.¹⁸ With the other jurisdictions, Indiana recognizes that if a landlord creates very bad conditions at a property, the tenant may terminate the lease and be released from all obligations under it.¹⁹ The obligation on the part of the tenant is to vacate the property within a “reasonable time.”²⁰

When the students heard judges talk about constructive eviction, the judges always rejected application of the doctrine because the tenant had not vacated the property. But in none of these cases had the judge considered whether a “reasonable time” had elapsed. As the doctrine of constructive eviction developed in the mid-twentieth century, courts acknowledged that where families – particularly low-income, minority, female-headed families with children – had few opportunities to find alternative housing, a “reasonable time” within which to vacate might be a substantial period of time, indeed.²¹ As township and other courts in Indiana apply the doctrine of constructive eviction, they should take into account the necessity of determining what is a “reasonable time” within which the particular household should move.

b. The Implied Warranty of Habitability.

¹⁷ *Breezewood Management Co. v. Maltbie*, 411 N.E.2d 670 (Ind. App. 1980) and *Johnson v. Scandia Associates, Inc.*, 717 N.E.2d 24 (Ind Sup. Ct. 1999).

¹⁸ *Sigsbee v. Swathwood*, 419 N.E.2d 789, 794 (Ind. Ct. App. 1981).

¹⁹ *Sigsbee v. Swathwood*, 419 N.E.2d 789, 794 (Ind. Ct. App. 1981).

²⁰ *Sigsbee v. Swathwood*, 419 N.E.2d 789, 794 (Ind. Ct. App. 1981).

²¹ See Robert S. Schoshinski, *Remedies of the Indigent Tenant: Proposal for Change*, 54 Geo. IL. J. 519, 530 (1966), citing cases.

As indicated above, the Indiana Supreme Court already has recognized that landlord obligations with respect to conditions may be implied into a residential lease. This is the holding of *Scandia*,²² which recognized covenants implied-in-fact. Thus, the court must ask whether there is an implied-in-fact covenant – e.g., in a situation where the landlord has indicated that it accepts responsibility for removing mold, but then does not act adequately to accomplish the removal.

Beyond the implied-in-fact covenant, however, is a maintenance covenant implied by law. Such a covenant is recognized in the vast majority of U.S. jurisdictions, by all the leading treatises, and by the Restatement of Property. It has been accepted by the Indiana Supreme Court for home sales, and had been accepted by the Indiana Court of Appeals for residential leases.²³ While not specifically addressed, it seemed to be rejected by the Indiana Supreme Court in *Scandia*, however.

But *Scandia* was decided in 1999, and the Indiana legislature changed the landlord-tenant law in 2002. In 2002, the legislature imposed on residential landlords a statutory obligation to maintain the premises in decent, safe, and sanitary condition and established the tenant's remedies of actual damages and consequential damages, attorney's fees and court costs, injunctive relief, and any other remedy appropriate under the circumstances.²⁴ Thus, residential landlords in Indiana now have an express obligation with respect to maintenance of the property, just as they would have if the obligation had been imposed by contract. Since contractual obligations would be enforceable by the tenants under a doctrine of dependent covenants, the statutory obligation – imposed by the legislature – also is enforceable in that same way. Other jurisdictions have recognized that when the legislature imposes this duty on a landlord, it can be enforced by a tenant. The classic statement was by Justice Cardozo, who wrote that the legislature must have had in mind that tenants could enforce such a law because they were the only people likely to do so.²⁵

Although no students observed a situation in which tenant defenses were taken into account, at least two judges told students that they do allow tenants to use rent money to make repairs and then deduct that amount from the rental payments owed. Students reported that Judge Poore of Washington Township told them that if a tenant has paid for repairs, he credits the repair payment against the rent due. Students reported also that Judge Smith Scott of Center Township told them that this is a proper procedure for tenants to follow. This repair-and-deduct remedy is appropriate, but it is appropriate because the obligations of the tenant and the landlord are dependent. The rationale for the repair-and-deduct remedy also is the rationale for considering tenant injury as an offset to the landlord's claim for rent. Most needed repairs are not inexpensive enough for tenants to make on their own – which is why the duty to remove mold or bedbugs or replace furnaces is put on the landlord.

²² *Johnson v. Scandia Associates, Inc.* 717 N.E.2d 24 (Ind. 1999).

²³ *Theis v. Heuer*, 280 N.E.2d 300 (Ind. 1972), *Barnes v. MacBrown*, 323 N.E.2d 671 (Ind. App. 1975), and *Breezewood Management Co. v. Maltbie*, 411 N.E.2d 670 (Ind. App. 1980).

²⁴ I.C. 32-31-8-5, 6.

²⁵ *Alitz v. Lieberston*, 233 N.Y. 16, 134 N.E. 703 (N.Y. 1922).

2. How Tenant Complaints Should be Addressed.

As shown above, there is no legal justification for the bifurcated procedure (eviction with additional facts being presented at the damages hearing at a later date) now used in landlord-tenant proceedings. There are many situations in which a landlord's claim to possession because of non-payment of rent may be defeated because of a tenant's claims: the landlord may be failing to perform an obligation explicit in the lease; the tenant may have a constructive eviction claim; the landlord may be failing to perform an obligation implied-in-fact; the landlord may be failing to perform an obligation imposed by statute. In any of these situations, the landlord's breach may eliminate or reduce the tenant's obligation to pay rent, and the landlord may not be entitled to possession based on nonpayment.

Some judges have resisted this logic, offering a variety of reasons. Judge Scott is reported to have said that she thinks it better for the tenant to leave a property that is substandard – but that is a decision for the tenant to make and, unfortunately, it often is the case that a substandard dwelling is the best option available. Judge Spear is reported to have said that favoring landlords' claims in this way enlarges the supply of rental housing here – but, as discussed above, the legislature has determined that rental housing may not be substandard, and the job of the courts is to enforce the legislative decision. In fact, strong public policy favors allowing tenants' claims to defeat landlords' suits, for this is one way to induce landlords to comply with the requirement that rental property be decent, safe, and sanitary. As Samantha Everett wrote:

Perhaps if the courts were allowed to consider bad conditions in cases for non-payment of rent, it would help to eliminate or mitigate cases filed for non-payment of rent and perhaps also serve as an incentive for landlords to maintain better conditions in their rental properties.

As another student wrote of a Washington Township case decided by Judge Poore:

One instance . . . stands out as a reason to hear the entire case in one session. The landlord was requesting possession and the tenant admitted she had not paid rent. The tenant said she and the landlord had a verbal agreement that the landlord would keep the utilities in the landlord's name and the tenant would pay for them. For some reason the landlord had the water and gas shut off two months prior to their court date. The tenant and six children had been living in the apartment with no gas and no water for two months and were evicted because they did not pay rent. The judge mentioned something to the landlord regarding illegally turning off utilities to tenants, but he said it would not be addressed until the damages hearing.

Part of the problem with the bifurcated proceeding is that the tenant suffers a judgment, which will make it even more difficult to secure alternative housing, even if law and justice are far more on the tenant's side than the landlord's. Some judges – Judges Joven in Lawrence Township and Judge Poore in Washington Township -- evidenced sensitivity to the problem of forcing a tenant to suffer a judgment. As one student reported of a Center Township case, the

tenant said,

the home had no heat and the lack thereof had been cited by the Health Dept. Despite the citation, the landlord had taken no action. The tenant said she had withheld rent pending the furnace being repaired, as well as a few other somewhat less critical items including faulty front steps.

Judgment was rendered for the landlord.

The period of time to locate alternative housing and to move out was extremely brief. The likelihood of someone finding suitable housing with no good reference from the prior landlord and a current eviction proceeding seems limited at best. Moreover, the lasting damage of an eviction on the credit report of what appeared to be a single working mother struck me as lasting punishment for the sins of another. . . . [F]rom a practical standpoint the tenant would appear to be the long term loser, regardless of a damage award.

In addition to changing the method of dealing with the private landlord-tenant relationship, the courts also should address the public nature of substandard conditions. When a judge hears complaints of serious health issues, such as mold, bedbugs, or lack of heat, the judge should secure the participation of the Health Department in resolving the problem. Evicting a tenant so that the landlord can rent a mold-infested unit to another family is not a rational public action.

III. SPECIFIC RECOMMENDATIONS.

A. Tenant Information

Everyone, including many of the judges, agrees that tenants are ill-informed about their rights.²⁶ We understand that the Marion County township judges are preparing a uniform “litigants’ rights” manual; we applaud this effort. As several of the judges have agreed, however, tenants need to know their rights “upstream,” when they enter into leases, not simply when litigation looms.

Toward this end, we urge wide distribution of a tenants’ rights brochure – to libraries, community centers, churches, etc. – and the provision of the brochure on-line. The material should be available in Spanish, Chin, and other languages. In addition, some counties, such as Tippecanoe County, offer a Manual for Small Claims Court which includes information for both landlords and tenants. This document is available in both English and Spanish.²⁷ This should be emulated in Marion County.

²⁶ Several students reported that Judge Spear “advised that tenants usually stop paying because of issues with the property that the landlord refused to take care of . . . He also mentioned that tenants are not aware of their rights which is why they stop paying instead of suing the landlord for damages.”

²⁷ <http://www.tippecanoe.in.gov/egov/apps/services/index.egov?path=details&action=i&jd=57>

Landlords should be asked to include a statement with every lease outlining the procedures for tenants to use if they have a complaint against the landlord. Such a statement could read, "If you, the tenant, have concerns about the current conditions of your rental unit, you have a duty to inform your landlord, preferably in writing. If action is not taken by your landlord, then you should consult a lawyer." As several students recommended, the legislature should mandate that this statement be included with every lease. The statement should include information about how to contact the health department and how to secure financial or legal assistance.

B. Court Materials: Uniform Standards, Forms, and Websites Among the Township Courts; A Bench Book.

Some but not all township courts provide forms and information on websites. One student reported that the Perry Township "website does not contain any forms used in court The court might be able to save time by posting commonly used forms to its website in PDF form so that potential litigants would have ready access to them." A student noted that the phone number listed for the Warren Township court on the City of Indianapolis website is incorrect.

Several students observed proceedings in more than one court; as one noted, judges in different townships "utilized vastly different procedures in applying the same underlying law." There also are significant differences involving courts in other counties.²⁸ We understand that the township small claims court judges are concerned about the lack of uniformity among those courts and are working toward achieving uniform standards, forms, and websites. We applaud these efforts. In particular, we urge a Bench Book for all the judges and:

1. That there be a uniform summons/complaint form used by all of the township courts;
2. That there be a uniform statement, made at the opening of landlord-tenant court, explaining to those in the courtroom what will happen. Perhaps the statement could be videotaped with closed captioning in Spanish or English and/or an American Sign Language interpreter;²⁹
3. That there be one website for the Marion County township courts combined, or that all of the websites contain identical material or links to a common website;

²⁸ For example, one student reported that Huntington County Magistrate Jennifer E. Newton of the Huntington County Superior Court (our alumna) said that "One of the benefits of a smaller county like Huntington is the ability of the judge to really pay close attention to each case. . . . In Huntington, the docket usually averages eight cases a week for landlord-tenant hearings. Magistrate Newton told me how many lawyers from Fort Wayne or Indianapolis do not necessarily like coming to smaller counties like Huntington because they have to defend much more of their reasoning and actual calculations. Magistrate Newton even sent one lawyer and his client out into the hall to fix a problem with double counting a month. She would not grant remedy until the petitioner was able to prove, step-by-step, the calculation he or she used to get to the figure that was being sought."

²⁹ Some judges do use such a statement, including, reportedly, judges in Fort Wayne and in Hamilton County.

4. That there be a uniform summons/complaint form that meets the following standards:
- Must be accessible to people who do not read English. This could be accomplished by including a statement on the form, in Spanish and several other languages, that says: "A copy of this form in ----- is available" at the court, on the joint website, in public libraries, and at other places.
 - Must notify people who are not proficient in English that they can request and secure an interpreter for their court appearance without cost to them and that they should do so prior to arriving at the hearing to assure proper notice for court staff.
 - Must notify people with disabilities that they can secure modifications and accommodations.
 - Must notify people how they can secure legal assistance. At the least, the summons/complaint should include referrals to ILSI, NCLC, and the Indianapolis and Indiana Bar association referral services. At least initially, this information might be provided on the joint website.
 - Must notify people how they can secure housing assistance. At the least, this should include contact information for the Indianapolis Housing Agency ("IHA") and other agencies that provide public housing and Section 8, a list of other subsidized housing resources, and encouragement to seek help from the township trustee. At least initially, this information might be provided on the joint website.
 - Must advise tenants that they can seek a different court date. Alternative dates and times should be indicated, and evening and Saturday sessions should be offered. As Crystal Pulley wrote, "the hearings [may be] set for times when defendants are unable to appear due to work conflicts" or child-care obligations; "[a]lthough the court would likely grant a continuance at defendant's request, an inexperienced defendant may not realize that this is an option."

C. In Court.

Several students noted that the court proceedings they attended did not begin on time; they urged punctuality on the part of the judges.

There should be an opening statement. In Hamilton County, Judge Wayne Sturtevant does this.

Before granting default judgments, all judges should do what Judge Poore of Washington Township now does: he asks about service, disabilities, military duty, and if the tenant knew about the pending eviction. Judge Donat in Tippecanoe County also asks if the defendant is known to be in military service. A student reported that a judge in Hamilton County appointed

counsel for a defendant who was in the military.³⁰

Often, attorneys – landlord attorneys in particular – are accommodated by having their cases called first. There is no reason to assume that these are the people most in need of swift disposition. Tenants may need to get to work, or to relieve child care providers. At the least, a court official should ask whether anyone present has an urgent need to be heard out of order.

In the relatively unusual situation of a tenant's appearing in court, particularly where the landlord has counsel and the tenant does not, the judge should ask not only whether the tenant is behind on the rent but also why. The tenant probably would not have gone to the trouble of appearing in court if there were not some reason – bad conditions, or a serious inability to pay the rent.

When a tenant comes to court and presents a tenable claim of bad conditions – a claim that a competent lawyer could frame as a constructive eviction or breach of statutory duty – the judge should appoint counsel or, at the very least, advise the tenant how to secure counsel and continue the case so that counsel may be secured. The action of Judge DeGroot in Allen County provides a good model.

There are some situations in which the courts must be proactive. As indicated above, the courts should make affirmative inquiry about military status, disabilities, language needs, and seriously substandard conditions. Another situation into which the courts should inquire affirmatively is foreclosure. Students saw several situations that seemed to involve foreclosures, where it was not clear that state or federal requirements had been satisfied. (The state has a mediation requirement;³¹ the federal Protecting Tenants at Foreclosure Act (PTFA) requires in general that tenants be allowed to remain for the duration of their leases or for 90 days, whichever period is longer.³²) In a case in Washington Township, before Judge Poore, the plaintiff had bought the home at a sheriff's sale; "defendant homeowners living in the home were not aware that the home's ownership had changed hands"; at an October 18 hearing, the homeowners – unrepresented by counsel – agreed to vacate by October 31. This seems to violate the PTFA.

Students also saw at least two cases that seemed to involve installment land sales (or rent-to-buy) contracts. Indiana has been in the forefront of protecting tenant/purchasers from overreaching in these situations, but those protections are unavailing if the landlord-tenant judges do not assist tenant/purchasers in knowing what their rights are.

In some situations, the courts should bring in agencies that can assist in resolving the issues. The health department should be brought in where there are threats to health. The IHA or other public housing agency should be brought in where Section 8 is involved. (One student saw a case involving Section 8 in Fort Wayne.) Two students saw a case involving a Center

³⁰ See Servicemembers Civil Relief Act, 50 U.S.C. App. §§501–596.

³¹ I.C. 32-30-10.5

³² Pub. L. No. 111-22, tit. VII, 123 Stat. 1632, 1660-62 (2009), as amended by Pub. L. No. 111-203, tit. XIV (2010).

Township tenant with Section 8 who was living in a home that had substandard conditions, which had caused IHA to stop making payments. "It had been two months since the federal assistance program paid her rent. The tenant was aware of this and had been communicating with the Section 8 office which was in the process of sorting out her paperwork." Judge Smith Scott ordered the tenant and her children to vacate by Saturday. Judge Smith Scott encouraged the woman to contact IHA, but the woman already had done that. If the court had contacted IHA, IHA would have been much more likely to respond.

Another student in Center Township court saw an elderly couple evicted although the problem was said to be with a lost Social Security payment. Judge Smith Scott encouraged the landlord to work this out but indicated she didn't have power to do anything. The Social Security Administration is far more likely to respond swiftly to a court official's inquiry than to the landlord's or the tenant's.

The court should refer specific cases to agencies that can help – e.g., the Spanish speaking tenant who did not understand about making part payments should have been referred to an agency that provides assistance to Spanish speakers.

The landlord-tenant courts should make use of the township trustee facilities. The Lawrence Township Trustee, meeting with the ACE group, told us that he has a list of landlords who will rent to needy households; in some cases, churches or nonprofit groups hold the leases on apartments and re-lease them to families. This is an excellent way to prevent families from becoming homeless. The trustees also can and should help in other ways.

The Washington Township constable said he would never force a tenant out with no place to go. "In fact, one day he spent eight hours driving around with an eighty-year-old woman, attempting to find her a place to stay. In this regard, the constable noted how invaluable the state's emergency assistance program is in helping people find food, housing and assistance programs. At this particular site, the emergency assistance center is in the same building as the court."

Several students recommended that "where a tenant has a short-term inability to pay rent" – because, e.g., of "a death in the family that she claimed caused her to be depressed and unable to work. Another individual just had a baby and needed time to get her life back in order" – the judge should exercise discretion. What happens now, in Center Township and other courts, is that the judge suggests that the tenant ask the landlord for more time. As one student noted, the fact that the landlord is suing the tenant makes it unlikely that the landlord will grant this request – at least if it comes from the tenant rather than the judge.

The various township courts now offer varying lengths of time before subjecting tenants to eviction. Center Township seems to offer the shortest length of time. Some judges exercise discretion. In Pike Township, Judge Douglas Stephens gave some tenants 13 days in which to pay. He asked about small children and explained that "if evicted, most of these people had no place to go. That puts a strain on other governmental resources to take care of them, such as homeless shelters or food kitchens."

For Center Township, by contrast, students understood Judge Smith Scott to say that she had exercised discretion in the past but decided not to do so because what she does for one tenant she would then have to do for all. Students considered that the judge should exercise her discretion to extend the time in circumstances where she thought delay warranted. As one student wrote:

it seems there is an ongoing battle in landlord-tenant court between efficiency and justice. In my opinion, efficiency is winning by a long shot based solely on economic factors. Judge Scott pointed out that she has the ability to negotiate the move-out date with tenants; however, if she did this for one tenant, she would find herself negotiating with all tenants. I believe that she could easily make a distinction between tenants who had special circumstances and those that merely did not pay their rent. . . . However, judges should use their discretion to sort out the special cases, for instance the Section 8 housing case and the case with no furnace

There should be a standard time before subjecting tenants to eviction, which will allow landlords and tenants to know what to expect, but the judges should also be able to exercise discretion.

The courts should provide scheduling options that allow working families the ability to access the small claims courts. As an example, courts should offer childcare facilities. Small claims court should also have Saturday and evening sessions.

STATE OF INDIANA) IN THE MARION COUNTY SUPERIOR COURT
) SS: CIVIL DIVISION, ROOM NO.:
 COUNTY OF MARION) CAUSE NUMBER:

STATE OF INDIANA ex. rel. Paula)
 E. Loossa, as Judge of the)
 Center Township Small Claims)
 Court of Marion County and)

490050612PL50738

PAULA E. LOPOSSA, as Judge of the)
 of the Center Township Small)
 Claims Court of Marion County)

Plaintiffs,

vs.

CARL L. DRUMMER, as Trustee)
 of Center Township, Marion)
 County, Indiana, and)

TOWNSHIP BOARD OF CENTER)
 TOWNSHIP, MARION COUNTY)
 INDIANA,)

Defendants.

FILED
 DEC 1 8 2006
 (121)
Donna A. Walker
 CLERK OF THE
 MARION CIRCUIT COURT

**VERIFIED COMPLAINT FOR MANDATE,
 FOR INJUNCTION, AND FOR DECLARATORY JUDGMENT**

Come now the State of Indiana on the relation of Paula E. Loossa, as Judge of the Center Township Small Claims Court of Marion County, and Paula E. Loossa as Judge of the Center Township Small Claims Court of Marion County, by counsel, Norman Reed and for her complaint for mandate, complaint of injunction and for declaratory judgment would state as follows:

PARTIES

1. At all times relevant herein, the Relator and Plaintiff, Paula E. Loossa, is the

duly elected and qualified Judge of the Center Township of Marion County Small Claims Court (which Plaintiff is hereinafter "Judge" and which said Court is hereinafter "Court").

2. At all times relevant herein the Defendant, Carl L. Drummer, is the duly elected and qualified Trustee of Center Township, Marion County, Indiana (hereinafter "Trustee").
3. At all times relevant herein Center Township, Marion County, Indiana, is a political subdivision of the City of Indianapolis under IC 36-6.
4. At all times relevant herein the Township Board of Center Township, Marion County, Indiana, (hereafter "Board") is a township board created under IC 36-6-6.

PRELIMINARY STATEMENT

5. Jurisdiction is proper pursuant to Article 1, Section 12 of the Constitution of the State of Indiana which provides that all courts "shall be empowered with the ability to administer justice freely, and without purchase; completely and without denial; speedily and without delay." This Section provides that the Court must have the ability to secure its own freedom of action and to carry on its own business with dignity, decorum, order, due dispatch and convenience. *See Carlson v. State*, 220 N.E.2d 532 (Ind. 1966).
6. Thus Article 1, Section 12 of the Indiana Constitution empowers the Court to hire and supervise its employees and to fix their remuneration. Further this section of the Indiana Constitution empowers the Court to fix its reasonable operating expenses and to determine and then provide for its spatial needs.

7. The Trustee has failed to provide the Court necessary space, proper equipment and sufficient supplies for the Court to function properly and serve the more than 11,500 litigants who annually seek adjudication of their disputes. Furthermore, Defendant Trustee has determined who is employed by the Court and has not allowed the Court consultation on hiring of court staff. Nor has the Trustee consulted the Court on the training, promotion or disciplining of court staff.

Failure to Pay Reasonable and Necessary Expenses

8. In order to function properly the Court must have the ability to contract the services of attorneys as judges *pro tempore* or temporary judges and to contract the services of interpreters.
9. To provide consistency and to be more efficient, it is preferable that a judge *pro tempore* be familiar with the Court's operating procedures, well-versed in the inner workings of the Court or otherwise properly trained to handle the day to day business of the Court in the absence of the presiding Judge.
10. The Court primarily uses the services of one (1) particular attorney since doing so reduces the amount of time the Court would spend training an attorney who is unfamiliar with the law as it applies to smalls claims court.
11. The Court has set the compensation for this judge *pro tempore* at One Hundred Dollars (\$100) per court session. Since 2002, there have been numerous occasions when the Trustee's office has issued payment at a rate of One Hundred Dollars (\$100) per session, for the services of a judge *pro tempore*. However in 2006, the Trustee stopped making these payments.

12. The Trustee has refused to pay this reasonable compensation to the attorney who has been contracted by the Court to serve as its judge *pro tempore* during the judge's absence or as temporary judge to aid the Court in handling a crowded Court docket.
13. The Court owes this permanent judge *pro tempore* Two Thousand Two Hundred Dollars (\$2,200).
14. Furthermore, in order for the Court to function properly it must sometimes engage the services of an certified interpreter.
15. The Court has set the compensation of a interpreter at One Hundred Dollars (\$100) per court session. There have been occasions when the Court has experienced problems securing payments for the services of a certified interpreter.

Hiring, Supervising and Disciplining Court Employees

16. In order for the Court to function properly, the Court must be able to hire supervise and discipline its own staff.
17. Further, hiring, training and supervision of the Court's employees is important since the judge is held responsible for the employees' behavior under the Code of Judicial Conduct.
18. The Trustee has determined who the clerks of the Court are, and has not allowed the Court consultation on hiring of court staff. Nor has the Trustee consulted the Court on the training, promotion or disciplining of Court staff.

19. In 2005, one of the Court's clerks sought a seat on the city-county council, informing the Trustee but not the Judge. She believed that her employer was the Trustee.
20. To solve the obvious violation of Canon 5 A. (f) of the Code of Judicial Conduct, the judge sought to have the Trustee transfer the employee to his office for the duration of the campaign.
21. The Trustee refused to do so until the Judge sought an opinion on the issue from the Judicial Qualifications Commission stating that it is a violation of Canon 5 A. (f) for the employee to run for partisan political office while employed at the Court.
22. The Court was acutely embarrassed that it was forced to seek a statement of the obvious meaning of the Canon before the Trustee would reassign the employee to his office for the duration of the political campaign.
23. Further, in August 2006, the Trustee required the Judge to record her objections to the poor work performance of one of the Court's clerks.
24. The Trustee would not consider discipline of the clerk until the Court drafted a four (4) page letter giving specific details of the clerk's failure to perform.
25. With a case load of nearly 12,000 cases per year, the Court does not have the time to comply with such demands of the Trustee.

Provision of Equipment

26. The Trustee and the Board have failed to provide the court with proper equipment necessary to provide speedy justice to litigants as required pursuant to IC 33-34-6-2.
27. For example, this year the Trustee provided the Court with a used printer to replace its malfunctioning printer.¹
28. In 2004, the Court asked the Trustee to provide it with the following pieces of equipment:
- A check printer to quickly print checks in payment of garnishment orders,
 - Label printer for use in labeling its files, and
 - Office dividers so that employees may have some degree of privacy to enhance concentration.
29. To date the Trustee has failed to fulfill these requests for appropriate equipment.

Annual Budget

30. The Trustee does not consult the Court on the drafting of its annual budget which the Trustee presents to the Board for approval.
31. In order for the Court to function properly, the Court must be able to draft its own budget for presentation to the Board.

¹The Court composes its own orders and prints them for mailing to inform *pro se* litigants of action taken at their request.

Appropriate and Functional Space

32. In order for the Court to function properly, the Court must have appropriate and functional space to operate with a caseload which averages 12,000 cases per year.
33. The Court has 1,615 square feet for its office, courtroom, the clerks' workspace and storage. In this space the Court must house its six (6) clerks, the bailiff/constable their equipment, supplies and more than 12,000 files-in addition to the Judge's private office.
34. With only 1,615 square feet the Court cannot provide its personnel with productive work space. Nor can it offer counsel and/or *pro se* litigants the amenity of conference space to engage in discovery or resolve their disputes prior to a trial. Every other small claims court in Marion County has sufficient space to do so.
35. The Trustee has failed to provide the Court with appropriate and functional space to operate efficiently as required by IC 33-34-6-1.

Theory Of Case

36. This is a civil action for equitable relief from the oppression endured by Plaintiff, resulting from Defendants' violation of Plaintiff's rights as protected by the Constitution of the State of Indiana.
37. Plaintiff seeks relief from such oppression and urges the Court to issue a mandate, an injunction and declaratory judgment in favor of Plaintiff and against the Defendants herein.

38. Venue is proper because the acts complained of and the parties involved are situated within the State of Indiana, County of Marion.

COUNT I - PROHIBITORY INJUNCTION AGAINST THE TOWNSHIP TRUSTEE

39. Plaintiff incorporates by reference legal rhetorical paragraphs 1- 38 as if fully set forth herein and further alleges and states as follows:
40. Plaintiff moves this Court to enjoin the Trustee from hiring, supervising and disciplining the Court's clerks.

WHEREFORE, the Plaintiff, seeks the following relief:

- a. For this court to assume jurisdiction over this cause;
- b. To enjoin the oppressive conduct of the Trustee;
- c. To order the conduct complained of unconstitutional;
- d. To grant Plaintiffs costs of this action, reasonable attorneys' fees, with interest, and all other relief which is just and proper in the premises.

COUNT II - MANDATORY INJUNCTION AGAINST THE TOWNSHIP TRUSTEE

41. Plaintiff incorporates by reference legal rhetorical paragraphs 1- 40 as if fully set forth herein and further alleges and states as follows:
42. Plaintiff moves the Court to issue a mandatory injunction ordering the Trustee to pay the permanent judge *pro tempore* and the certified interpreter for their services.

WHEREFORE, the Plaintiff, seeks the following relief:

- a. For this court to assume jurisdiction over this cause;
- b. To order the equitable relief herein sought;

- c. To grant Plaintiffs costs of this action, reasonable attorneys' fees, with interest, and all other relief which is just and proper in the premises.

COUNT III - DECLARATORY JUDGMENT

43. Plaintiff incorporates by reference legal rhetorical paragraphs 1- 42 as if fully set forth herein and further alleges and states as follows:
44. The Plaintiff moves this Court to issue a declaratory judgment holding that the Plaintiff has the power and authority to hire, supervise and discipline its own employees.
45. The Plaintiff further moves this Court to issue a declaratory judgment holding that the Court has the authority to prepare and submit an annual budget to the Trustee's for his consideration and for the Board's approval.
46. Finally, the Plaintiff moves this Court to issue a declaratory judgment holding that the Court has the authority to order its own equipment and supplies, for payment by the Trustee.

WHEREFORE, the Plaintiff, seeks the following relief:

- a. For this court to assume jurisdiction over this cause;
- b. To order the equitable relief herein sought;
- c. To grant Plaintiffs costs of this action, reasonable attorneys' fees, with interest, and all other relief which is just and proper in the premises.

COUNT IV - SEPARATION OF POWERS

47. Plaintiff incorporates by reference legal rhetorical paragraphs 1- 46 as if fully set forth herein and further alleges and states as follows:

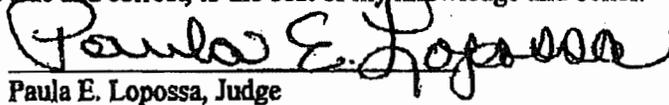
- 48. The Trustee's control of the Court violates Article 1 Section 12 of the Indiana Constitution by preventing the Court from administering "justice freely ... completely ... speedily and without delay".
- 50. In order for the Court "to operate independently, freely and with absolute integrity" the Court must not be hampered and interfered with for lack of funds withheld by the Trustee or the Board. See Carlson v. State, 220 N.E.2d 532, 535 (Ind. 1966).
- 51. The Plaintiff moves the Court to enjoin the Defendants from interfering with application of the Court's Constitutional and Discretionary powers.

WHEREFORE, the Plaintiff, seeks the following relief:

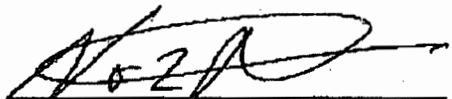
- a. For this court to assume jurisdiction over this cause;
- b. To declare the conduct complained of unconstitutional;
- c. To order the Defendants to pay the outstanding fees complained of herein;
- d. To grant Plaintiffs costs of this action, reasonable attorneys' fees, with interest, and all other relief which is just and proper in the premises.

VERIFICATION

I, Paula E. Lopossa, the duly elected and qualified Judge of the Marion Small Claims Court Center Township Division, hereby swear or affirm under the penalty for perjury that the foregoing representations are true and correct, to the best of my knowledge and belief.


Paula E. Lopossa, Judge

Respectfully submitted,


Norman L. Reed, Attorney for Plaintiff

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

EXAMINATION REPORT
OF

MARION COUNTY SMALL CLAIMS COURT,
CENTER TOWNSHIP DIVISION
MARION COUNTY, INDIANA

January 1, 2009 to December 31, 2010



FILED

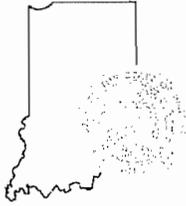
03/15/2012

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
Court Officials.....	2
Transmittal Letter	3
Examination Results and Comments:	
Condition of Records - Financial Report Opinion Modification.....	4
Untimely Remittance of Small Claims Court Fees	4-6
Internal Controls - Small Claims Court Judgment Checks	6
Exit Conference.....	7
Official Response	8-10

COURT OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Judge	Hon. Michelle Smith Scott	01-01-07 to 12-31-14
Chairman of the Township Board	Linda Journey	01-01-09 to 12-31-09
	Phyllis Carr	01-01-10 to 12-31-10
	Linda Journey	01-01-11 to 12-31-11



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INDIANAPOLIS, INDIANA 46204-2769

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TO: THE OFFICIALS OF THE MARION COUNTY SMALL
CLAIMS COURT, CENTER TOWNSHIP DIVISION

We have examined the records of the Marion County Small Claims Court, Center Township Division for the period January 1, 2009 to December 31, 2010, and certify that the records and accountability for cash and other assets are satisfactory to the best of our knowledge and belief, except as stated in the Examination Results and Comments. The financial transactions of this office are reflected in the Annual Report of Center Township, Marion County, for the year 2009 and 2010.

STATE BOARD OF ACCOUNTS

December 15, 2011

MARION COUNTY SMALL CLAIMS COURT, CENTER TOWNSHIP DIVISION
MARION COUNTY
EXAMINATION RESULTS AND COMMENTS

CONDITION OF RECORDS - FINANCIAL REPORT OPINION MODIFICATION

Financial records presented for examination were incomplete and not reflective of the activity of the Township Small Claims Court. The records presented did not provide sufficient information to examine or establish beginning balances, receipts, disbursements, ending balances, or the accuracy or correctness of the transactions.

The Court Cash Book of Receipts and Disbursements (Township Form 25M) was not maintained during the examination period. The Court started using the state approved Odyssey system in September 2008, however, the financial module was not maintained, therefore, the cashbook reports were not accurate and did not reflect all financial activity of the Court. Not having a cash book or equivalent output from the software system means that management could not expediently review the overall activity of the Court, and increases the likelihood that errors or fraud may not be detected timely. The Court cash book or an approved form should be maintained.

Additionally, the Township Small Claims Court did not maintain accurate bank reconciliations during the examination period. Bank reconciliations presented for examination were incomplete and did not coincide with month-end ledger balances. Subsequent to December 31, 2010, significant work has been done to balance the small claims court records. As of December 15, 2011, the Township Small Claims Court is reconciled; however, many adjustments will need to be made to the financial records.

Due to the condition of records described above, the State Board of Accounts was unable to provide an unqualified opinion on the accuracy of the financial statements.

At all times, the manual and/or computerized records, subsidiary ledgers, control ledger, and reconciled bank balance should agree. If the reconciled bank balance is less than the subsidiary or control ledgers, then the responsible official or employee may be held personally responsible for the amount needed to balance the fund. (Accounting and Uniform Compliance Guidelines Manual for Townships, Chapter 13)

Indiana Code 5-13-6-1(e) states: "All local investment officers shall reconcile at least monthly the balance of public funds, as disclosed by the records of the local officers, with the balance statements provided by the respective depositories."

Accounting records and other public records must be maintained in a manner that will support accurate financial statements. Anything other than an unqualified opinion on the Independent Auditors' Report on the financial statements may have adverse financial consequences with the possibility of an increase in interest rate cost to the taxpayers of the governmental unit. (Accounting and Uniform Compliance Guidelines Manual for Townships, Chapter 13)

Officials and employees are required to use State Board of Accounts prescribed or approved forms in the manner prescribed. (Accounting and Uniform Compliance Guidelines Manual for Townships, Chapter 13)

UNTIMELY REMITTANCE OF SMALL CLAIMS COURT FEES

Certain fees collected at the Center Township Small Claims Court are to be paid twice a year to the State of Indiana, Marion County, and to Center Township, respectively. During the examination period, we observed that the Court has only disbursed one check to the State of Indiana since 2006. Also, no fees were remitted to Marion County during the examination period. The Court remitted some fees to Center Township during the examination period; however a large balance was still due to the Township. As of December 31, 2010, the Court owes the following fees to the respective governmental units:

MARION COUNTY SMALL CLAIMS COURT, CENTER TOWNSHIP DIVISION
MARION COUNTY
EXAMINATION RESULTS AND COMMENTS
(Continued)

State of Indiana	\$1,016,520
Marion County	105,042
Center Township	<u>809,876</u>
Total	<u>\$1,931,438</u>

Indiana Code 33-34-8-3 states:

"(a) Payment for all costs made as a result of proceedings in a small claims court shall be to Center Township of Marion County Small Claims Court. The court shall issue a receipt for all money received on a form numbered serially in duplicate. All township docket fees and late fees received by the court shall be paid to the township trustee at the close of each month.

(b) The court shall:

(1) semiannually distribute to the auditor of state:

(A) all automated record keeping fees (IC 33-37-5-21) received by the court for deposit in the homeowner protection unit account established by IC 4-6-12-9 and the state user fee fund established under IC 33-37-9;

(B) all public defense administration fees collected by the court under IC 33-37-5-21.2 for deposit in the state general fund;

(C) sixty percent (60%) of all court administration fees collected by the court under IC 33-37-5-27 for deposit in the state general fund;

(D) all judicial insurance adjustment fees collected by the court under IC 33-37-5-25 for deposit in the judicial branch insurance adjustment account established by IC 33-38-5-8.2; and

(E) seventy-five percent (75%) of all judicial salaries fees collected by the court under IC 33-37-5-26 for deposit in the state general fund; and

(2) distribute monthly to the county auditor all document storage fees received by the court.

The remaining twenty-five percent (25%) of the judicial salaries fees described in subdivision (1)(E) shall be deposited monthly in the township general fund of the township in which the court is located. The county auditor shall deposit fees distributed under subdivision (2) into the clerk's record perpetuation fund under IC 33-37-5-2.

(c) The court semiannually shall pay to the township trustee of the township in which the court is located the remaining forty percent (40%) of the court administration fees described under subsection (b)(1)(C) to fund the operations of the small claims court in the trustee's township."

MARION COUNTY SMALL CLAIMS COURT, CENTER TOWNSHIP DIVISION
MARION COUNTY
EXAMINATION RESULTS AND COMMENTS
(Continued)

Indiana Code 33-34-8-4 states:

"Fees, costs, and any other amounts collected by the courts shall be accounted for quarterly to the clerk of the circuit court on:

- (1) March 31;
- (2) June 30;
- (3) September 30; and
- (4) December 31;

of each year."

INTERNAL CONTROLS - SMALL CLAIMS COURT JUDGMENT CHECKS

The controls over the procedures related to the distribution of the Township Small Claims Court (Court) checks were insufficient. The Court did not have procedures established to notify individuals who were entitled to payment. The Court did not mail judgment checks to the individuals they were due. Each day, the checks were issued, filed alphabetically, and held at the Court office for pick up by the payee.

It was up to the individual to inquire about the check and pick the check up. Individuals were directed to contact the Court four to six weeks after the judgment was issued and inquire as to whether a check was available at the office for them to pick up. At the end of each month, the Court staff would send postcards to individuals who had a large number of checks in the office. Due to the lack of controls over the check distribution process, a large number of checks remained on the outstanding check list. The small claims court outstanding check list at December 31, 2010, totaled \$294,466.

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets and all forms of information processing are necessary for proper internal control. (Accounting and Uniform Compliance Guidelines Manual for Townships, Chapter 13)

MARION COUNTY SMALL CLAIMS COURT, CENTER TOWNSHIP DIVISION
MARION COUNTY
EXIT CONFERENCE

The contents of this report were discussed on December 7, 2011, with William E. Douglas, former Trustee, and Robert B. Turner, Attorney.

The contents of this report were discussed on December 8, 2011, with Eugene W. Akers, Trustee; Deborah L. Vaden, Center Township Chief Executive Officer; and Eric Bailey, Center Township Budget Director.

The contents of this report were discussed on December 12, 2011, with Hon. Michelle Smith Scott, Judge, and Debra L. Duncan, Clerk I. The Official Response has been made a part of this report and may be found on pages 8 through 10.

The contents of this report were discussed via telephone on December 15, 2011, with Carl L. Drummer, former Trustee and Fred Biesecker, Attorney.

Judge:
Michelle Smith Scott

**Center Township of
Marion County Small Claims Court**

City-County Building, Suite G-5
200 East Washington St.
Indianapolis, IN 46204
www.centertownship.org/court

Telephone:
(317) 327-5060
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December 21, 2011

Jenny Wagner
Field Examiner
State Board of Accounts
302 West Washington Street, Room E418
Indianapolis, IN 46204

Re: OFFICIAL RESPONSE

Dear Ms. Wagner:

Thank you for meeting with me to conduct the Exit Conference on December 12, 2011. The Center Township Small Claims Court, including myself and the staff are committed to making the necessary changes to greatly improve the results of the most recent audit. Several changes are underway, as well as other improvements which should eliminate the areas of concern revealed in the audit. Please include this letter as the Official Response to the Examination Results and Comments concerning the Center Township Small Claims Court.

I. Condition of the Records – Financial Report

The audit revealed several areas of concern over the past management of the financial books and records for the Center Township Small Claims Court. I have enlisted the assistance of the Indiana Supreme Court's Judicial Technology Automation Committee (JTAC) Product Managers to determine the best way to reconcile and maintain accurate financial records beginning August 2008, when the Odyssey Case Management system was implemented at the Court. The JTAC staff will recommend how the Court should proceed through Odyssey to maintain accurate financial records and provide training.

To insure that the Court is in compliance with the financial reporting requirements for future examination periods, I will assign the duties of maintaining the Court's Cash Book of Receipts and Disbursements and bank reconciliations to a designated court clerk. The Court will also follow the recommendations of JTAC to insure that the Odyssey records, ledgers and bank balances agree and to insure that the accounting records are maintained in a manner that will support accurate financial statements. The improvements set forth aim to prevent any cost to taxpayers possibly caused by past noncompliance.

II. Untimely Remittance of Small Claims Court Fees

The audit revealed that certain fees collected at the Center Township Small Claims Court had not been paid to the state, county or township during the audit period. The outstanding fees that were deposited by the Small Claims Court to its bank account during the audit period, but were not paid, will be identified and paid. The Court will begin the process to identify and construct these fees through the Odyssey Case Management system in order to distribute the outstanding payments. With the assistance of the Indiana Supreme Court's Judicial Technology Automation Committee (JTAC) Product Managers, the Court will reconcile its financial records and determine the correct fees owed for each month, quarter, etc. The Court will do so in order to accurately report and make payments beginning from the Court's Odyssey implementation date, which was August 2008.

To insure that the Court is in compliance with the financial reporting requirements for future examination periods, I will assign a clerk to insure that all payments are collected and disbursed in a timely and accurate manner, consistent with the requirements of Indiana Code 33-34-8-3 for Quarterly, Semiannual and Annual Reports. The Court will also follow the recommendations of JTAC to insure that the Odyssey records, ledgers and bank balances agree in order to submit accurate financial reports and distribute accurate fees. The improvements set forth aim to prevent any cost to taxpayers possibly caused by past noncompliance.

III. Internal Controls - Small Claims Court Judgment Checks

The audit revealed that the controls over the procedures to distribute judgment checks received into the Center Township Small Claims Court were not sufficient. I reviewed this procedure with the court staff and the Indiana Supreme Court's Judicial Technology Automation Committee (JTAC) Product Managers to identify a method for better internal control of judgment checks. Judgment creditors who are owed funds are accustomed to picking up checks at the Small Claims Court, especially large filers and frequent filers. The Court also mails checks to judgment creditors who are out of

county or who provide envelopes and request to have them mailed. However, there was a large sum on the outstanding check list during the audit due to funds not being collected by the judgment creditors.

To insure that the Court is in compliance with the financial requirements for future examination periods, the Court will improve its internal controls and implement a new procedure beginning January 2012. Litigants will be notified that checks will be mailed to judgment creditors on a monthly basis or they may continue to pick them up timely at the Court upon request. Checks that have not been picked up by the end of the month will be mailed to the judgment creditor. All outstanding checks that remain will be mailed to the last known address of the judgment creditor. All checks that are returned to sender and/or older than five (5) years will be sent to the Indiana Attorney General's Unclaimed Property Division in accordance with the law. The Court will also include the distribution of the checks on the outstanding check list ledger and on the Chronological Case Summary (CCS) in the Odyssey Case Management system. The improvements set forth aim to prevent any cost to taxpayers possibly caused by past noncompliance.

In closing, I believe the above changes will greatly improve the financial operations of the Center Township Small Claims Court and allow a greater level of transparency. Thank you for your consideration in these matters. Please include this letter in the bound report for the Center Township Small Claims Court for the audit period. I will gladly accept any questions or comments from the public concerning this report directly at the Center Township Small Claims Court, 200 E. Washington Street, Suite G5, Indianapolis, IN, 46204 or via fax at (317) 327-7844.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Smith Scott", written in a cursive style.

Judge Michelle Smith Scott
Center Township Small Claims Court

CC: Donna Edgar, Product Manager, Indiana Supreme Court, State Court Administration, Judicial Technology Automation Committee (JTAC)

FROM: TIM NOWACKI, LAW CLERK TO JUDGE BAKER
TO: JUDGE BAKER, JUDGE BARTEAU
RE: SMALL CLAIMS PROJECT: CENTER TOWNSHIP
DATE: FEBRUARY 13, 2012 (AMENDED FEBRUARY 23, 2012)

On February 9, 2012, I attended hearings at the Center Township Small Claims Court. On Thursday mornings, the court holds hearings on debt collection cases filed by the law firm of Bowman, Heintz, Boscia, and Vician (Bowman).

The court sits in the basement of the city-county building. As I walked down the hallway towards the courtroom, I observed what appeared to be court staff greeting, filtering, and organizing individuals. One of the court staff asked me if I had a summons and complaint, I told her that I was an observer, and she directed me to the main door of the courtroom. Nearing the courtroom, the bailiff stopped me and asked me if I was an attorney. When I stated that I was there to observe, he told me that he had to wait and see whether he had enough room to seat me. He then asked me the name of my company. I responded that I was not with a company, told him I was with the State of Indiana, and produced my State ID badge. After about a minute, the bailiff took me into the courtroom and directed me to a seat among the attorneys. The bailiff also directed the defendants to specific seats in the courtroom. Each defendant received a form from Bowman seeking the voluntary disclosure of personal information. I was unable to determine whether Bowman attorneys or court staff handed the form to the defendants.

The bailiff began the hearings with a warning about courtroom rules. Then, an attorney from Bowman stood at the front of the courtroom and addressed the defendants. He stated that federal law required that he notify them that his law firm is a debt collector. He then spoke about the purpose and process for the hearings. He explained that the defendants were there for either an admit or deny hearing or a garnishment hearing. He stated that each defendant would meet with a Bowman attorney to discuss their case and that any contested issues would be heard in chambers.

A Bowman employee placed a stack of files on a table at the front of the courtroom, and three more attorneys from Bowman entered the room. Each attorney then retrieved a file from the stack on the desk, called out the name on the file, and met with the debtor individually. Two of the attorneys stood at the bench while they met with the debtors, and the other two sat at the table at the front of the room. The bailiff stood behind the bench.

It was difficult to discern the entirety of any one conversation, but from what I could

overhear, the attorney would name the debt owed and then ask the debtor whether they would admit or deny debt. The attorneys, when asked, would provide general information about the legal process, but on several occasions, I heard an attorney state that they could not give legal advice. If the defendants denied the debt, the attorney told them their case would be set for trial. Most debtors admitted that they owed the debt and some wanted further clarification about the details of the debt before signing the admit form.

Once the defendant made a decision to admit or deny the debt, the attorney had the defendant sign an admit/deny form. If the defendant admitted the debt, the attorney asked questions about the defendant's income and value of bank accounts and property holdings. Some defendants sought to settle their debt with a single lump sum payment: others asked to for a payment plan within their budget. One defendant claimed to have filed bankruptcy and the attorney meeting with her noted that she would place an immediate hold on her file.

The individual meetings were approximately three to ten minutes. During the hour I observed, I estimate that the four attorneys processed thirty-five to forty defendants.

Please let me know if you have any questions or require more detail.

FROM: JOE MERRICK, STAFF ATTORNEY
TO: SENIOR JUDGE BARTEAU, JUDGE BAKER
RE: SMALL CLAIMS PANEL; PIKE TOWNSHIP
DATE: FEBRUARY 23, 2012

On Thursday, February 23, 2012, I observed proceedings at the Pike Township Small Claims Court. The Court holds hearings on Wednesday and Thursday mornings.

When I entered the court's offices and approached the front desk, a court employee greeted me and asked for my name. I provided it and explained that I was an attorney and wanted to observe the proceedings. The employee said I was welcome to sit in the courtroom or the lobby. A sign in the lobby advised visitors that the court staff cannot give legal advice.

As I sat in the lobby, I saw that next to the courtroom there is a hallway with 3 small offices without doors. Debt collection plaintiffs' attorneys came into those offices, apparently on a first-come, first-serve basis, and occupied them for the duration of my visit. There is also a table in the lobby, and as the morning progressed other debt collection plaintiffs' attorneys occupied the table.

I noted the following procedure with respect to pro se defendants in debt collection matters. When one of those defendants came into the lobby, a court employee asked for their name and any paperwork they might have. Next, the employee went to retrieve the court's case file. The employee then returned to the front desk and returned the defendant's paperwork. The employee told the defendant that the defendant would first speak with the attorney who filed the lawsuit, and, if the parties could not reach an agreement, then the defendant had the right to go before the judge that day. Next, the employee directed the defendant to have a seat in the courtroom or the lobby and stated that his or her name would be called in the order they came in. At the beginning of the day, neither the judge nor court employees were in the courtroom, so it was used as a waiting area. Approximately 15 defendants had arrived by 9:00 am.

After directing the pro se defendant to have a seat, the court employee would either deliver the court file to a plaintiff's attorney or set the file aside until the plaintiff's attorney came to ask for more files.

Every so often, a plaintiff's attorney would come into the courtroom or lobby with the file, call the defendant's name, and talk with the defendant in one of the offices or at the table. I frequently heard the attorneys introduce themselves to the defendants, and on those occasions the attorneys explained who they represented and stated that they were trying to collect on a debt. I was unable to hear the subsequent details of the parties' conversations, which lasted anywhere from ten to thirty minutes. After an attorney and the defendant were done talking, the defendant generally left the court without talking to anyone else, and the attorney returned the file to court staff. I do not know whether the parties reached a settlement agreement that the court later approved, or whether the parties agreed to continue the matter.

I saw some of the debt collection attorneys freely enter and exit the court staff areas and use the court's copier. Court employees frequently circulated in the lobby and hallway, asking pro se defendants for their names and ensuring that they had not been overlooked by the attorneys.

At 9:30, the constable came into the courtroom and advised everyone present of the court's rules (take off hats, do not place bags on the party podiums, etc.). Next, Judge Stephens entered and took the bench. He heard two landlord-tenant disputes, and in both cases the tenant did not appear. Judge Stephens continued one of the cases because the landlord had accepted partial payment from the tenant yesterday, and he would not issue an eviction order under those circumstances. In the other landlord-tenant dispute, Judge Stephens dismissed the absent defendant's counterclaim and entered judgment for the landlord in the amount of \$6,000.

As the judge heard cases, the debt collection attorneys continued to enter the courtroom and call out defendants' names for conferences. During a break between cases, Judge Stephens took an informal poll of the defendants to determine what types of cases were present. Debt collection on medical bills, debt collection on neighborhood association dues, and landlord-tenant issues predominated. Judge Stephens told the defendants that he encouraged them to speak with the debt collection attorneys but that it was not necessary to do so, and the defendants had a right to present their cases to him.

Next, Judge Stephens heard a debt collection case that the parties had been unable to settle. The pro se defendant had let her house go into foreclosure and was delinquent on neighborhood association dues. Furthermore, the defendant missed the trial date. Judgment had been entered against her, and the parties were present for proceedings supplemental. The defendant asked for a continuance to

hire counsel and stated that she was considering bankruptcy. The plaintiff objected to any continuance. Judge Stephens continued the case to May 17, subject to the defendant's bankruptcy filing. At one point, the defendant said that she thought she no longer owed neighborhood association dues after the home went into foreclosure. Judge Stephens stated that it was his understanding that a homeowner remained liable for dues until the house sold at a sheriff's sale. As the parties left the courtroom, the judge directed the plaintiff's attorney to get a copy of the scheduling entry for the pro se defendant.

I left the court at 10:30, while Judge Stephens presided over a trial involving an auto accident. Please let me know if you have any more questions.

FROM: JOE MERRICK, STAFF ATTORNEY
TO: SENIOR JUDGE BARTEAU, JUDGE BAKER
RE: SMALL CLAIMS COURTS TASK FORCE; CENTER TOWNSHIP
DATE: March 2, 2012

On Friday, March 2, 2012, I observed proceedings at the Center Township Small Claims Court. The Court held hearings on debt collection cases brought by IU Health System.

The court opened its doors at 9:00. Court employees directed persons with cases before the court to go sit in the courtroom. No one requested my identification or questioned my presence.

When I entered the courtroom, I saw the constable and a court employee reading through stacks of files. The constable asked the parties (10-15 persons) to call out their cause number so that he would know who was present. Only pro se defendants were present at that time. The constable placed the case files on the judge's bench.

Judge Michelle Smith Scott took the bench at 10:30. She announced that IU Health's attorney, Richard Skiles, was not present and had not contacted the court. Judge Smith Scott asserted that his absence was very unusual. Next, she went through the case files and called up the defendants one by one. Several of the defendants were present for "admit/deny" hearings. Judge Smith Scott dismissed those cases without prejudice to IU Health's right to refile them at a later date.

The remaining defendants had already had judgments entered against them and were present for proceedings supplemental. Two of them denied receiving notice of the lawsuit but admitted liability for their debts. Judge Smith Scott set up wage garnishment orders for them. She allowed the defendants to set their garnishment rates because they were present and IU Health was not.

The remaining defendants who were present for proceedings supplemental asserted that their insurers had already paid their debts. Judge Smith Scott continued their cases for a later date. She also gave those defendants Richard Skiles' contact information and asked them to contact him to work out their cases informally.

I left the court at 11:00, when the last case was heard.

Please let me know if you have any more questions.

FROM: Joe Merrick, Staff Attorney
TO: Senior Judge Barteau, Judge Baker
RE: Small Claims Court Task Force; Warren Township Court
DATE: March 6, 2012

On the morning of Tuesday, March 6, 2012, I observed proceedings at the Warren Township Small Claims Court ("the Court"). The Court holds hearings on Tuesdays, Wednesdays, and Thursdays in the morning and in the afternoon.

I noted that a document setting forth the schedule of the Small Claims Court Task Force's hearings was prominently posted on the front door of the Warren Township government building, on the Court's front door, and on the door to the Court's offices.

The Court opened its doors at 8:25. A bailiff (not the constable, who was absent during my visit) asked litigants to show him their paperwork as they entered the courtroom. He had the day's case files on his desk and matched the files with the parties who were present. The bailiff then directed the litigants to sign in with a clerk, who sat next to the judge's desk, and have a seat in the courtroom. I told the bailiff that I was there to see how things worked, and he invited me to have a seat.

There were approximately 20 people in the courtroom. Only one of the litigants was accompanied by an attorney.

Judge Garland Graves took the bench shortly after 8:30. He stated that pro se defendants would have an opportunity to discuss their cases with the attorneys who filed suit against them. Judge Graves further stated that if the parties could not reach an agreement, or if a defendant did not want to speak to the plaintiff's attorney, the parties had the right to have their case heard by him that day.

Next, Judge Graves swore in all parties. His bailiff approached the bench with case files, and the bailiff called out the cases one by one to come up to the bench. Judge Graves heard approximately twenty cases. The majority of cases were landlord-tenant disputes, all but one of the remaining cases were debt collection matters.

The landlord-tenant disputes were split between eviction matters and proceedings supplemental for back rent and property damage. If the tenant did not

appear for an eviction matter, but there was a record of proper service of process, Judge Graves required the landlord to put forth the evidence supporting his or her claim before entering judgment in favor of the landlord. If the tenant did not appear for proceedings supplemental, Judge Graves continued the matter.

The majority of the debt collection matters involved pro se parties on both sides. Several of the defendants who appeared expressed a willingness to work out a payment plan, and Judge Graves directed them to speak with court staff in the Court's offices.

In one case, a pro se plaintiff filed suit against an auto dealership, claiming that the used car he purchased was defective. The defendant had filed a motion to dismiss, alleging that the purchase agreement contained an arbitration clause that barred the lawsuit. However, the defendant failed to appear for the admit/deny hearing to discuss the motion. Consequently, the case was rescheduled for a trial.

Only one debt collection attorney was present. The attorney entered the courtroom from the Court's offices, called a pro se defendant's name, and asked her to talk with him in the Court's offices. They were not able to reach an agreement, so they returned to the courtroom and asked Judge Graves to hear the case. The matter was at the proceedings supplemental stage, and the plaintiff's attorney asked the defendant questions about her assets. The defendant asserted that the debt was from 2004 and wondered why the action was allowed to go forward at this late date. Judge Graves explained that the deadline to collect on a judgment is quite long compared to the deadline to file a lawsuit. The defendant appeared to have no assets subject to the judgment except for a car that the defendant alleged had been loaned to her, so Judge Graves continued the matter to allow for more investigation.

As the hearings wound down, I asked the bailiff (who, as it turns out, is the constable's father) if I could look at the Court's offices. I wanted to see the offices because Judge Graves had sent several parties there to drop off paperwork or to discuss payment options. Also, the debt collection attorney appeared to be operating out of there. The bailiff gave me a brief tour. He pointed out a block of six cubicles where plaintiffs' attorneys in debt collection matters could talk to defendants. The cubicles were located among court employees' cubicles.

Thank you for the opportunity to assist the Task Force with its work. Please let me know if you have any more questions.

FROM: TIM NOWACKI, LAW CLERK TO JUDGE BAKER
TO: JUDGE BAKER, JUDGE BARTEAU
RE: SMALL CLAIMS COURTS TASK FORCE: WAYNE TOWNSHIP
DATE: MARCH 6, 2012

On March 6, 2012, I observed the Wayne Township Small Claims Court. Judge Danny Vaughn presided over the proceedings. The following are my observations:

1. The court staff members were easily identifiable and friendly. The court staff wear blue or black polo shirts with Wayne Township logos.
2. The court staff area includes a large countertop for the litigants to check in. A sign requests that all individuals check in before entering the courtroom. I informed a court staff member that I was observing the court.
3. At no point did I observe any attorneys go behind the counters.
4. In the "waiting" area in front of the counter, there were cubicles for the attorneys to meet with litigants. The cubicles had glass walls so that at all times interactions between litigants are observable.
5. Judge Vaughn did not open court with an explanation of court proceedings or litigant rights. He heard approximately fifteen landlord-tenant eviction cases and a couple of general disputes. In almost all of the landlord-tenant cases, one side failed to appear.
6. Because the activity seemed light on this particular morning, I intend to return and view debtor-creditor proceedings.

THE WALL STREET JOURNAL

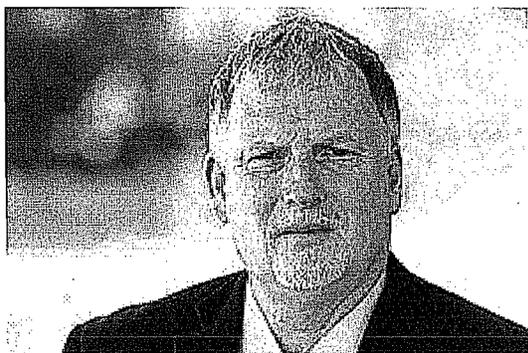
WSJ.com

ECONOMY | Updated July 18, 2011, 3:46 p.m. ET

In Debt Collecting, Location Matters

By JESSICA SILVER-GREENBERG

MARION COUNTY, Ind.—For U.S. consumers with too many bills and not enough money, the end of the line is often a small-claims court like the one here in Pike Township.



AJ Mast for The Wall Street Journal

Judge A. Douglas Stephens allows unsupervised settlement talks.

Judge A. Douglas Stephens, who presides over all the township's small-claims cases, calls himself a "Renaissance redneck" and wears a small gun strapped to his ankle while on the bench. He says he has little patience for the "feeble protests" of people who try to dodge their financial obligations.

Shortly after his 2003 election, he recalls, two insurance executives in "bad suits" sat silently in the back of his courtroom to see if he would rule in favor of their company in a dispute involving damage from a car accident. He says he did, based on the facts.

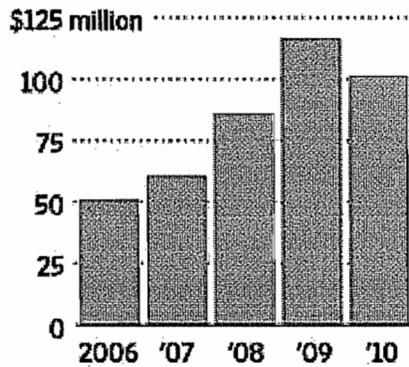
These days, his calendar is packed with cases from many insurance companies—sometimes more than 200 a day—against residents who allegedly owe money for insurance premiums or car accidents. The defendants live not only in Pike Township but in townships all over Marion County. Judge Stephens says that American Family Mutual Insurance Co., based in Madison, Wis., files all its cases against county residents in his township because "they had a problem with another judge who was consistently too tough," whom he declines to name. Judge Stephens says he is "totally impartial." American Family declined to comment.

As companies and debt collectors try to collect on overdue bills that piled up during the financial crisis, the recession and their aftermath, they are borrowing a tactic from plaintiffs' lawyers: They shop around for the best places to bring their claims. Debt collectors aren't so much worried about whether a court will rule that the debtor owes the money—most cases are fairly clear-cut on that point—but about how aggressively collectors can pursue a debtor's assets.

Lawsuits to collect on bad debts have to be filed in the state where a debtor lives. In most cases, debt collectors don't get to choose the court in which the case will be heard. Unless it involves an especially large debt, it will be the small-claims court in the debtor's county, and there's no way for a debt collector to pick the judge.

Unpaid Bills

Consumer loans written off by lenders



Note: Includes credit-card debt, auto loans and other unsecured consumer finance
Source: Moody's Analytics

There are exceptions, however, and they leave debt collectors room to maneuver. Virginia allows companies to file lawsuits in the county where a creditor is based, not where the borrower lives. In Cook County, Ill., collectors can choose between six municipal courts, and in Pulaski County, Ark., they can pick from eight small-claims courts.

Parts of Indiana are particularly unusual. Although the state requires suits to be filed in the county where the borrower lives, in Marion County and one other county, collectors can choose among township courts—each with a single judge. The courts handle all collection disputes involving up to \$6,000.

"We lawyers call it forum-shopping," says Richard Gonon, a lawyer for Accounts Recovery Bureau Inc., a Reading, Pa., medical debt-collection firm that has filed cases in Marion County.

Companies such as Encore Capital Group Inc. and Portfolio Recovery Associates Inc. buy pools of bad loans at steep discounts, then try to collect on them. They begin by determining which states give them the greatest latitude to seize assets from borrowers who haven't paid up.

Brokers for distressed debt say investors like states such as Illinois, Maryland and New Jersey, where laws permit them to seize assets such as cars, pension payments and a portion of debtors' wages. Consequently, they try to buy loan pools from those states.

Brokers say investors shy away from buying bad debt from some other states. In Texas, married couples can shield from creditors as much as \$1 million in residential real estate and \$60,000 in personal property. California doesn't allow debt collectors to garnishee the bank accounts of delinquent borrowers.

Brokers say geography is the single biggest factor in how much debts fetch. Accommodating laws and judges often mean the difference between a profit and loss on debts pursued in court, says Mark Russell of Kaulkin Ginsberg, a Rockville, Md., adviser to debt collectors.

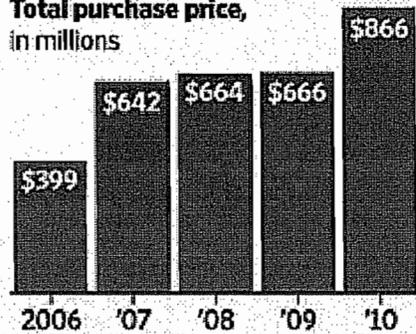
In states where laws are more favorable to debt collectors, they pay more for such debt. Unpaid consumer debt sells for about seven cents on the dollar in Indiana, compared with two cents in Texas, according to Lou DiPalma, a debt broker in Harrison, N.Y. Such debt also fetches relatively high prices in Illinois, Minnesota, Ohio and Virginia, he says.

Debt collectors regard Indiana as friendly territory. Companies can file small-claims suits by mail rather than sending lawyers to file them in person. If a debt collector wins in court, nearly all of a creditor's assets

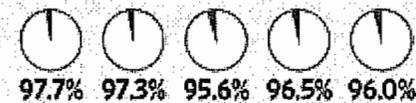
Collection Business

Defaulted consumer debt purchased by the three largest publicly traded buyers

Total purchase price, in millions



Discount from face value



Note: Includes credit-card debt, auto loans and other unsecured consumer finance
Sources: Encore Capital Group; Portfolio Recovery Associates; Asset Acceptance Capital

can be pursued for payment, including real estate, pension payments and cars, which are off-limits in many other states.

Marion County, where Indianapolis is located, is the state's most populous county. It is carved into nine townships, each with its own court—a vestige of a time in which every Indiana resident was supposed to be able to reach a courthouse on horseback in one day.

Eighty percent of debt-collection cases against Marion County residents involved less than \$6,000 in 2009, the latest year for which figures are available, so they were handled by township courts. State law allows debt collectors to file the suits in any of the nine courts.

Jeff Bennett, who oversees the Warren Township court's budget and staff, says township courts depend on filing fees of \$81 per case to fund a chunk of their operations. He says that creates a "perverse incentive" for judges and their staffs to be "accommodating" to collectors.

Pike Township's Judge Stephens says debt collectors often choose the court where they expect to recoup the most money. His court is the second-busiest in Marion County, with 8,200 cases filed last year and 2,731 filed through April of this year, according to court officials. "I'm pretty much the insurance-company judge," he says, noting that suits filed by insurance companies account for about 20% of his caseload.

Judge Stephens allows lawyers for companies trying to collect debts to use cubicles next to his courtrooms to hash out payment plans with debtors in lieu of bringing their cases before the court. The judge doesn't supervise the meetings—the law doesn't require him to do so—and nearly all of the borrowers come to court without lawyers of their own.



AJ Mast for The Wall Street Journal

Judge Garland Graves doesn't allow unsupervised settlement meetings.

Such settlement meetings occur in several other township courts as well. Debtors sometimes agree to make debt payments using income that is protected from seizure by state law, such as unemployment or disability payments, according to Garland Graves, the judge in Warren Township, who says he doesn't allow unsupervised settlement meetings. Many defendants make concessions without knowing their rights, he says.

Judge Stephens responds: "I am under no obligation to tell someone how to defend

themselves...If someone owes a debt, which they generally do, how much more advantageous is it for a defendant to get in front of a judge?" He adds that debtors can exercise that right if they want. "Defendants don't frequently make payments from these protected [income] sources," he says. "Just because they don't ask to go in front of a judge doesn't mean that they are being taken advantage of."

The court in Decatur Township also arranges unsupervised meetings. When defendants arrive, they often are told to sit in the courtroom until their names are called. They are called one at a time to meet with debt-collection lawyers, according to court employees. No judge is present.

Jeff Cook, an unemployed plumber, had a closed-door meeting earlier this year with a lawyer for Med Shield Inc., which collects debts for some of Indiana's largest nonprofit hospitals and outpatient clinics. He says he agreed to allow Med Shield to tap his unemployment benefits to cover a \$651 emergency-room bill. He found out later that debt collectors have no legal right in Indiana to seize unemployment checks to satisfy a verdict in a lawsuit.

Decatur Township Judge William L. Fisher Jr. didn't return calls seeking comment. Med Shield declined to comment.

Decatur Township has become the preferred courthouse for lawyers who collect soured debt on behalf of medical providers, according to Pam Ricker, who has managed the court's operations for more than 25 years. The township has no hospitals.

Ms. Ricker says a lack of public transportation discourages many defendants from showing up in court, resulting in automatic wins for debt collectors.

"We certainly have our loyal attorneys," said Ms. Ricker. The court provides lawyers with coffee in a break room and a fax machine for their clerical needs.

Of the 106 Med Shield cases scheduled to be handled by the court one day in February, just three involved defendants who lived in the township, according to an analysis of court records by The Wall Street Journal.

Some township judges are uncomfortable with appearing too accommodating to debt collectors. Last year, Judge Steven Poore of Washington Township barred lawyers from meeting privately with defendants. He says he was worried that the court looked like "an arm of the debt collectors." He now reviews all debt-collection settlements. The number of debt-collection suits filed in Washington Township is down sharply, he says.

Mr. Gonon, the medical debt-collection lawyer, says he stopped filing lawsuits in Washington Township. He says he will file future cases in a township where the judge is less "debtor-friendly" and will let him meet one-on-one with defendants. "Hard-liners" like Judge Poore, he says, "hurt business because it's harder to collect money on each account."

Judge Poore says the courts aren't intended to function as "business generators for debt collectors," noting that his changes in procedure help ensure that everyone gets a fair hearing.

Maxine King, the small-claims-court judge in Washington Township until she lost her re-election bid in January, says she also banned closed-door meetings between defendants and lawyers. She

says she did so after learning that debt-collection firms were discouraging debtors from bringing their cases before her. "It was a clear obstruction of the justice that should be given to each defendant," she says. "Ideally, debt-collection firms wouldn't have such latitude and would have to file where the debtor lives, not where they like the judge most."

In Center Township, court constables hand out questionnaires outside the small courtroom's entrance. The forms ask defendants for their telephone numbers, Social Security numbers and employer's addresses. The defendants hand over the forms to collection lawyers when they are called to settlement meetings, which aren't supervised by the judge. The questionnaires are prepared by an Indiana law firm that sues borrowers on behalf of credit-card issuers, according to township Judge Michelle Smith Scott.

Crystal Dupree, a 32-year-old office manager facing a lawsuit over an alleged debt on a store-issued credit card, says she wrote down her bank-account information and cellphone number because she thought the form was an official court document. "It's really deceptive, and I never would have given them that information," she says. She disputes that she owes money on the credit card.

Lawyers at the law firm that prepared the questionnaire declined to comment. Mark Anthony Duncan, the Center Township constable in charge of serving defendants with court documents, says defendants aren't forced to fill out the questionnaires, adding that the forms inform defendants they are "from a debt-collector."

Judge Scott, when contacted by the Journal, said she would instruct constables to stop handing out the questionnaires so as to prevent "any wrong perception" that the forms are issued by the court. "I can't deny that some collectors shop around the township courts to find the one where they will fare best," she said. "I want to ensure my court is fair."

Shortly after Judge Graves took over the Warren Township court in January, he says, calls poured in from debt-collection lawyers trying to figure out where he stood. Judge Graves says his predecessor on the bench was unpopular with debt collectors because he hired an administrator to review payment agreements between defendants and collection firms.

Mr. Bennett, who oversees the court's budget and staff, says debt-collection lawyers threatened to take their cases and filing fees elsewhere if Judge Graves didn't back down.

Judge Graves says some company lawyers asked court officials to fax them hundreds of pages of documents on previous judgments, which the judge took to be a test of his willingness to accommodate debt collectors.

He refused. "I don't want to be a pushover," he says. "If that means losing business, well, I guess that's what we're going to do."



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Indiana News

Supreme Court Orders Review of Marion County Small Claims Courts

Two appeals judges to assess whether changes needed for fairness
By Eric Barman (eric@wibc.com)
2/14/2012

Two appellate judges will investigate whether the Marion County Small Claims Courts need to change the way they operate.

Marion County is the only one in the state, and one of the few in the nation, where debt collectors can choose which court to file their case in.

The Wall Street Journal reported last summer that some collection agencies or other creditors assess which judges are less favorable to debtors and file their cases there.

The high court has assigned Court of Appeals Judge John Baker and Senior Judge Betty Barreau to conduct hearings in Parry and Pike Townships in the next few weeks.

Baker notes the township judges have already made some changes. Warren Township Small Claims Judge Garland Graves says in some townships, judges had been allowing creditors' lawyers to hold unsupervised settlement conferences with debtors.

And Marion Circuit Judge Louis Rosenberg says he's already worked with the township judges on a new brochure outlining creditors' and debtors' rights and responsibilities.

But Baker says it's critical that creditors and debtors are not only treated fairly, but come away believing that they have.

And Baker says he's concerned about anecdotal reports that some township court staffers are answerable to the trustee, not the judge, and have balked at carrying out changes the judge asks for.

Lawsuits over debts of less than six-thousand dollars are eligible for small-claims court.

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February 20, 2012

Marion County small-claims court rules raise questions of fairness in Indianapolis

Indiana residents wonder if some court practices can shortchange justice

By Carrie Ritchie
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Krieg Kinnaman remembers his trip through the Marion County small-claims court system as a nightmare.

A judgment was entered against him in 2007 for an outstanding balance on a credit card that he didn't remember having and that a debt collector couldn't prove belonged to him.

He never received a summons to come to court, and when he learned about the case, he found himself dealing with an attorney for the debt collector -- not with a court employee.

The attorney, Kinnaman said, assured him that the judgment would be thrown out.

It wasn't. In 2010, the debt collector tried to garnishee his wages.

"It's almost like you don't even deal with the courts," Kinnaman said. "I think it's unfair."

Stories like Kinnaman's led the Indiana Supreme Court to take action. The state's highest court last week announced that a task force will examine Marion County's nine small-claims courts, which handle civil cases involving less than \$6,000.

Judges and people such as Kinnaman say they have seen and experienced ill treatment in the courts.

Among the concerns: attorneys for debt collectors who work too closely with the courts and plaintiffs, often debt-collection agencies, who cherry-pick courts to hear their cases.

Indiana Court of Appeals Judge John Baker, who will serve on the task force, said he expects it to find potential solutions to some problems and perhaps propose changes to state law.

"I'm worried that people might perceive they aren't being treated fairly," Baker said. "And if they have that perception, it really doesn't matter if they were treated fairly or not. . . . We do want to make sure that not only the people who are being summoned into court but the general public (have) confidence in the court system."

"A travesty to justice"

Each of Marion County's nine townships has a small-claims court, and the townships pay to run them. Most of the cases they handle are debt collection or disputes between landlords and tenants. In Indiana's 91 other counties, those cases go through superior and circuit courts.

The small-claims courts, intended to resolve cases efficiently, have looser rules and a more relaxed atmosphere.

Some say that leads to problems.

In attorney Chris Jackson's view, the system is "a travesty to justice." People often represent themselves and are unsure of their rights, said Jackson, who defends people in mortgage and debt collection cases.

It's also unclear which people in the courtroom are court employees and which are attorneys for debt-collection agencies. Some of the courts allow attorneys for debt-collection agencies to use office space, she said.

"It's crazy," Jackson said. "People come in and talk to attorneys for the debt collector."

Debt collectors try to talk defendants into settling, even if there is insufficient evidence to show they owe money, she said.

And the debt collectors can be convincing.

Jake Tyler, a Southside resident, said an attorney for his apartment complex's debt collection agency bullied him and his roommate so they would settle a dispute over damaged carpet.

Tyler, 26, said he had done legal research online and had prepared information to present in their defense. But he wasn't prepared to be taken into a small room with the attorney, who became "aggressive," he said.

"We thought we would get a chance to say what our problems were," Tyler said. "It was basically (the attorney) saying, 'We can go to the judge, but you're going to lose.'"

Tyler and his roommate decided to stop fighting.

"It just felt like we got intimidated," he said.

How prevalent such complaints are is among the subjects the Supreme Court task force will study. But Chip Clark, an attorney for Carmel-based debt-collection agency General Credit Services, said he hasn't seen attorneys behaving badly and doesn't think he has received special treatment in the courts.

The biggest problem he sees, he said, is inconsistency in the way the courts operate, including their schedules.

"I think the judges, at least the ones I'm dealing with, are fair," Clark said. "Not to say there's not potential for abuse."

Aggressive attorneys aren't the only thing causing some to cry foul. With the exception of landlord-tenant cases, plaintiffs can file cases in any township.

Some say that can lead to questionable practices such as "forum shopping." Forum shopping is when plaintiffs, often debt-collection agencies, choose a court that is farther from a defendant's home so it's difficult for the defendant to show up for hearings, or when plaintiffs choose a court where they think they will have a better chance of getting a favorable ruling.

That might have happened in Kinnaman's case. When Kinnaman, a Far-Northside resident, learned of the credit card judgment against him, he had to go to a court on the Southside where the case had been filed.

Greg Hurley, an analyst for the National Center for State Courts, a nonprofit court-improvement

organization, said the small-claims courts need to stop plaintiffs from forum shopping. He suggested that they require plaintiffs to file their suits in the township where defendants live.

"Obviously, having multiple venues that a person could file in is something we would discourage," Hurley said.

Judges support changes

Several small-claims court judges said they support the Supreme Court's move to evaluate their courts.

"I don't think this is a bad thing at all," Washington Township small-claims court Judge Steven Poore said. "I think this is a great thing."

Poore and other judges also have taken steps individually to make their courts seem more fair. Poore said his court rarely allows attorneys for plaintiffs to come into the office area.

When concerns surfaced that attorneys were telling defendants they didn't need a judge to hear their cases, Poore said, he went out of his way to hear all cases in which defendants were representing themselves.

That practice drove away an attorney who had filed several cases in Poore's court, he said.

Warren Township small-claims court Judge Garland Graves said he asks court employees to make sure defendants know their rights, including their right to go before a judge.

The courts also need to prevent an atmosphere in which attorneys for debt collectors and other plaintiffs are "part of the judicial furniture," said Marion Circuit Judge Louis Rosenberg, who is an adviser to the small-claims court judges.

One way to do that, he said, is to make sure that public space within the courts is just that -- public. Attorneys for plaintiffs shouldn't monopolize consultation rooms or office space, he said.

Rosenberg has been meeting with the small-claims court judges to find other strategies.

They have put together a brochure that explains defendants' rights and responsibilities, which they hope will help people who represent themselves feel more confident in court. The brochure tells defendants they have a right to take their case to the judge and can request a change of venue if they think the court is biased or too far from their home, Rosenberg said.

To ensure that voices beyond those of judges and lawyers are heard, Court of Appeals Judge Baker is asking the community to weigh in by coming to public hearings that begin Wednesday. He hopes to submit potential changes to the Supreme Court rules committee this summer so they can be in place by next year.

Baker said he is looking forward to hearing input from the community during the hearings. He said he wants to know about people's experiences with the system and their suggestions for improving it.

"We've heard anecdotal stories," Baker said, "and we want to see the people affected by it."

Follow Star reporter Carrie Ritchie on Twitter at twitter.com/CarrieRitchie. Call her at (317) 444-2751.

Additional Facts

SMALL-CLAIMS COURT CONCERNS

Looser rules and a relaxed atmosphere at Marion County's small-claims courts aim to resolve cases efficiently. But legal observers raise flags, particularly over two issues:

Appearances can be deceiving. Attorneys for debt collectors, working amid court personnel, can look like court employees.

Court shopping. In some cases, attorneys can choose a court where they expect a favorable ruling or that is far from a defendant's home.

INDYSTAR.COM

March 1, 2012

Small-claims court task force hears public's complaints

At meeting, residents speak about problems with small-claims courts

By William J. Booher

william.booher@indystar.com

A two-judge task force looking into the operation of township small-claims courts in Marion County heard complaints Wednesday night about inconvenience and confusion with the current system.

About 60 people attended, and several spoke, during the public meeting at the Pike Township small-claims court on Lafayette Road.

It was the second of three public gatherings being held by the task force of Indiana Court of Appeals Judge John Baker and Senior Judge Betty Barteau of the appeals court.

Roger and Reita Vandrey of Pike Township spoke about their experience of having to travel three times to the small-claims court in Decatur Township to resolve confusion over the payment of a medical bill.

Except for landlord-tenant disputes where claims must be filed where the property is located, plaintiffs can file a complaint in any of the county's nine township small-claims courts.

Indianapolis attorney Paul Ogden, who is experienced in representing plaintiffs, said plaintiffs' attorneys do look to file in the small-claims court that they believe will be most favorable to them, regardless of where services were provided or where the defendants live.

"It's not convenient if you live in Lawrence Township and the filing of the case is in Decatur Township," he said.

Some people who have been small-claims defendants said court decisions were not properly recorded, causing them to face the case again even though it had been resolved earlier.

Also, they told of being handed paperwork seeking information when arriving at court and learning that they were forms being handed out by the plaintiff's attorney, not court staff.

Baker said this has been brought to the task force's attention multiple times.

"The public might not know the difference between the plaintiff's attorney and a member of the court staff" when they have just arrived at court.

The task force later this year will report its findings to the Indiana Supreme Court, which created the two-judge panel.

Additional Facts

Next meeting

The last of three public hearings in the task force's research into the operation of township small-claims courts in Marion County will be:

»6 p.m. Wednesday, Marion Circuit Court, Room W122, City-County Building, 200 E. Washington St.

INDYSTAR.COM

March 19, 2012

Dual role of Marion County small claims court judges raises flags

Judges who also work as attorneys lead to concerns about impartiality

By Carrie Ritchie
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Small-claims court judges John Kitley Jr. and A. Douglas Stephens have known each other for about 30 years.

But when Stephens showed up in Kitley's court a few years ago, Kitley said, he politely told his friend to leave.

The reason? Stephens was there as an attorney representing a defendant in a case.

"I told him, 'Doug, I'm not going to hear your cases,'" Kitley said.

The problem, he said, is that letting small-claims court judges work as attorneys in one another's courts could give the appearance of impropriety.

While it's unclear whether rules governing judges' conduct prohibit it, having judges with dual roles can cause several problems, in particular a perception that they will have an unfair advantage in court, Kitley and others in the legal profession say.

"It's a bad idea for these guys to be appearing before their brethren," said Charles Geyh, a professor of law at Indiana University-Bloomington's Maurer School of Law and an expert on judicial ethics and conduct.

But questions over how it looks haven't stopped some small-claims court judges in Marion County from doing it. An Indianapolis Star review of court records found dozens of cases in which small-claims judges have represented clients in one another's courts.

Complaints about such practices are among many issues in Marion County small-claims court being studied by a task force appointed by the Indiana Supreme Court. The Indiana Commission on Judicial Qualifications has never issued a formal opinion on small-claims court judges practicing in one another's courts.

The commission said through a spokeswoman that the task force might offer solutions that would eliminate the problem.

Even if judges are allowed to do it, it's a questionable practice, said Marion Circuit Judge Louis Rosenberg, who by law is an adviser to the county's nine small-claims court judges.

"It doesn't sound kosher to me," he said. "It doesn't smell right."

Indiana Court of Appeals Judge John Baker, who is on the task force, said he was unaware that the small-claims judges were practicing law in other small-claims courts.

"I would be more comfortable if we didn't have that situation," Baker said.

Danger of dual roles

Walking the line between attorney and judge can lead to some questionable consequences, from inconveniencing others to giving people the impression that the courts are biased.

Stacy Vandiver said he was surprised when he walked into the Perry Township small-claims court last year and saw the opposing attorney in his case, Stephens, in the court office talking to Judge Bob Spear and appearing to be "buddy-buddy."

Vandiver had obtained a default judgment against Stephens' client, a mechanic who had failed to show up to court for previous hearings, but Stephens got the judgment thrown out.

Vandiver said he didn't realize Stephens was a judge at the time but noticed a difference in Spear's demeanor after Stephens took the case.

"It was a night-and-day switch that was flipped in that courtroom," he said. "It didn't matter what paperwork I had or what proof I had -- whatever (Stephens) wanted, he was getting."

Spear dismissed the case after Vandiver failed to show up for a hearing. The hearing was moved up a week, and Vandiver said he was out of town and didn't receive the court's rescheduling letter until after the hearing occurred. Vandiver said he didn't bother pursuing the case.

Vandiver said he suspected Stephens was getting special treatment.

"Who wants to make their friends mad that they're working with every day?" Vandiver said. "I'm not trying to say they break the law, but they let it bend, I think."

Spear called Vandiver's concerns "unfounded." He said he would never give one of his colleagues special treatment.

"A case is a case," Spear said, "and who the lawyer is, whether it's a judge or some lawyer you've known for 20 years, is not supposed to make a difference. And as far as I'm concerned, it doesn't."

Since taking the Pike Township bench in 2003, Stephens has served as an attorney on more than 50 cases in his colleagues' courts. Stephens said nothing prohibits him from acting as an attorney in the small-claims courts, but he tries not to practice in those courts often "because I know the perception is not good."

Even though he knows the judges and the system, he said he does not have an edge over his opponents when practicing in other small-claims courts.

"Any perceived advantage I have "doesn't exist."

Indianapolis attorney Kirk Leblanc said he has gone up against small-claims judges who practice as attorneys in small-claims courts and has never witnessed favoritism.

In fact, he and Stephens were recently on opposing sides in a case before Danny Vaughn, the small-claims court judge in Wayne Township. They agreed to move the case to Marion County's Superior Court system, partly because Stephens is a judge and Leblanc sometimes fills in for Vaughn.

Vaughn would have been fair, Leblanc said, but "it's a lot better if you don't make the judge feel like he's in a pickle."

But sometimes, judges filing cases in one another's courts leaves others in a pickle, too.

Online court records show Kitley was listed as an attorney on more than 230 small-claims cases since 1995, when he became the small-claims judge in Franklin Township. At least 200 of those cases were filed on behalf of Franklin Township Schools to collect small amounts of money, such as book rental fees, from parents.

Because Kitley was the judge in Franklin Township and his law firm represented the school district, the cases had to be filed in neighboring Warren Township so there wouldn't be a conflict of interest. That meant parents had to travel north to resolve their cases.

Kitley said he didn't act as the attorney in those cases, but his sister and former law partner, Jean Kitley, did.

John Kitley said he asked the Judicial Qualifications Commission if he could practice in small-claims courts. The commission's response made him think it was a "gray area," and he decided it would be best not to. "I think it appears inappropriate," Kitley said, "and therefore I never did it."

Kitley has since quit practicing law and now considers himself a full-time judge.

Interpretation varies

Whether small-claims court judges are violating professional rules of conduct by practicing as attorneys in one another's courts depends on whether their courts are considered to be separate or part of the same court.

Marion County has nine small-claims judges and courts, one for each of the county's nine townships. All of the judges are elected, and most are considered part time.

No other Indiana county has that setup.

Part-time judges are allowed to practice law, according to the Indiana Code of Judicial Conduct, but there are restrictions on where they can practice. They can't appear as lawyers in the courts in which they are a judge.

That is where the interpretation of the code gets tricky. The small-claims courts all have the same role -- to handle civil cases involving \$6,000 or less -- and follow the same rules. The judges meet regularly to discuss various issues, including how to make sure court procedures are uniform.

That lends credibility to the argument that they are all one body and the judges shouldn't appear as attorneys in one another's courts, Geyh said.

"It's not as though these judges are divorced from each other," the IU law professor said.

However, the judges are elected by different people, the courts are in different locations and each township pays its judge's salary. Stephens said that setup makes them nine individual courts, so it's clear that judges can represent clients in one another's courts.

"There's absolutely no question about it," he said.

Still, it doesn't sit well with others, and the task force might put an end to it.

Baker, the appeals court judge who is on the task force, said one solution that has been suggested is for the small-claims courts to be rolled into Marion County's superior courts so the judges will no

longer be part time. Full-time judges are not allowed to practice law, so there would be no confusion on where they are allowed to practice.

The judges could continue to handle small-claims cases, he said, as well as some traffic cases because Marion County's traffic court is constantly swamped.

"I think we can be a little bit more creative and come up with a better way to use these people and the facilities and the resources more efficiently," Baker said.

Kitley said he suggested that idea to the task force.

He said he wants the judges to become full time so they will be subject to more of the same rules and restrictions as Marion County's other judges. He said that would make all of the courts more uniform, and it would quell suspicion that the small-claims courts are unfair simply because they are set up differently.

"I think it would do away with the target on our back," he said, "and put it on the entire system if there's a problem."

Additional Facts

Examining small-claims courts

In addition to concerns about small-claims judges acting as attorneys in other small-claims courts, a task force appointed in February by the Indiana Supreme Court is looking into these issues:

- »Attorneys for debt collectors working too closely with the court or appearing to be court employees.
- »"Forum shopping," a practice in which plaintiffs cherry-pick the court that will hear their case. The plaintiff chooses a court far from a defendant's home or where the plaintiff expects a favorable ruling.
- »Defendants who represent themselves but might not know their rights, such as their right to have a judge hear their case.
- »Inconsistencies in the way the nine courts are run. For example, they do not have the same schedule.
- »Lack of control over the budgets. The courts are funded by the townships, and judges say they do not have input in budgeting.

The task force has finished public hearings and will now review its findings to come up with potential recommendations.

Feedback from the hearings, letters from the public and reports from people who observed the courts will help the task force decide on its final recommendations, said Indiana Court of Appeals Judge John Baker, who is on the task force. The task force will take its recommendations to the Indiana Supreme Court rules committee this summer so they could be put in place by next year.

Carrie Ritchie