

In the
Indiana Supreme Court

CAUSE NUMBER: 94S00-1003-MS-128



ORDER AMENDING INDIANA RULES FOR SMALL CLAIMS

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Indiana Small Claims Rule 10 and Appendix A are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

...

Rule 10. Dismissal and default.

(A) **Dismissal.** If the plaintiff fails to appear at the time and place specified in the notice of claim, or for any continuance thereof, the court may dismiss the action without prejudice. If a counterclaim has been filed the court may grant judgment for the defendant after first making an inquiry similar to that required by S.C. 10(B) in the case of default judgments. If the claim is refiled and the plaintiff again fails to appear such claim may be dismissed with prejudice.

(B) **Default.** If the defendant fails to appear at the time and place specified in the notice of claim, or for any continuance thereof, the court may enter a default judgment against him. Before default judgment is entered, the court shall examine the notice of claim and return thereof and make inquiry, under oath, of those present so as to assure the court that:

(1) Service of notice of claim was had under such circumstances as to establish a reasonable probability that the defendant received such notice;

(2) Within the knowledge of those present, the defendant is not under legal

disability and has sufficient understanding to realize the nature and effect of the notice of claim;

(3) Either (a) the defendant is not entitled to the protections against default judgments provided by the Servicemembers Civil Relief Act, as amended (the “Act”), 50 U.S.C. appx. § 521, or (b) the plaintiff has filed with the court, subscribed and certified or declared to be true under penalty of perjury, the affidavit required by the Act (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service; and

(34) The plaintiff has a prima facie case.

After such assurance, the court may render default judgment and, upon entering such judgment, shall assess court costs against the defendant.

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**SMALL CLAIMS RULES
APPENDIX A**

Affidavit of Debt

Comes now affiant, and states:

I _____ am Plaintiff
(Name of Affiant) OR

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

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

Plaintiff:

is the original owner of this debt.

OR

has obtained this debt from _____ and the original

owner of this debt was _____.

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

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

The type of account is:

- Credit card account (i.e. Visa, Mastercard, Department Store, etc.)
List the name of the Company/Store issuing credit card: _____
- Account for utilities (i.e. telephone, electric, sewer, etc.)
- Medical bill account (i.e. doctor, dentist, hospital, etc.)
- Account for services (i.e. attorney fees, mechanic fees, etc.)
- Judgment issued by a court (a copy of the judgment is required to be attached)
- Other: (Please explain) _____

This account balance includes:

- Late fees in the amount of \$_____ as of _____.
(Month, Day, Year)
- Other (Explain _____)
- Interest at a rate of _____% beginning on _____.
(Month, Day, Year)

Plaintiff:

- is seeking attorney's fees and additional evidence will be presented to the court prior to entry of judgment on attorney's fees.
- OR
- is not seeking attorney's fees.

Plaintiff believes that defendant is not a minor or an incompetent individual

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

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

_____.

OR

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

("Active military service" includes fulltime duty in the military (including the National Guard and reserves) and, for members of the National Guard, service under a call to active service authorized by the President or Secretary of Defense. For further information, see the definition

of “military service” in the Servicemembers Civil Relief Act, as amended, 50 U.S.C.A. Appx. § 521.)

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

Dated: _____ Signature of Affiant: _____

These amendments shall take effect January 1, 2011.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney’s Council; Public Defender’s Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and Thomson Reuters. The Clerk is also directed to post this Order to the Court’s website.

Thomson Reuters is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 25th day of October, 2010.

/s/Randall T. Shepard
Randall T. Shepard
Chief Justice of Indiana

SHEPARD, C. J., and DICKSON, SULLIVAN, and RUCKER, JJ., concur.
DAVID, J., not participating.