



ALLEN SUPERIOR COURT CIVIL DIVISION COLLECTIONS PROCESS PROTOCOL

June 18, 2020

This Collections Process Protocol is implemented on April 22, 2020 and amended on June 18, 2020, by Allen Superior Court Civil Division Judges David J. Avery, Craig J. Bobay, Jennifer L. DeGroot, and the Magistrates of the Civil Division. In light of operational changes related to the COVID-19 health emergency, the Allen Superior Court Civil Division is implementing the below described modifications to the civil debt collection process in the Civil Division, including Small Claims Court. Further, the Indiana Supreme Court issued an Order captioned, "In re Petition to the Indiana Supreme Court to Engage in Emergency Rulemaking to Protect CARES Act Stimulus Payments From Attachment or Garnishment From Creditors." That Order is also addressed in this Protocol. This Protocol specifically addresses garnishments to employers, attachment of bank accounts, and case scheduling. These procedural modifications shall commence immediately, and shall remain in place until further contrary directives are issued. These modifications shall be reviewed by the Court prior to September 30, 2020. The process detailed in this protocol replaces the March 13, 2020 "Notice Of Covid-19 (Corona Virus) Small Claims Court Protocol."

1. As Governor Holcomb's March 23, 2020, and April 20, 2020 Executive Orders 20-08 and 20-22 state, judges and court personnel perform "Essential Government Functions," and are exempt from the Governor's "Stay at Home" Orders. The Allen Superior Court Civil Division and its employees are working. All e-filed motions, pleadings, claims, complaints, notices, stipulations, proposed orders, and other documents filed with the Court continue to be regularly reviewed and timely processed by the Allen Superior Court Civil Division and its Small Claims Court.

2. Creditor/Plaintiff's counsel may file new Proceedings Supplemental with Interrogatories to Employers. The new Proceeding Supplemental shall contain language directing employers to refrain from withholding wages until an actual Garnishment Order is issued and received by the employer. The following language must be included in all new Proceedings Supplemental with Interrogatories to Employers: ***"The Garnishee Defendant shall not withhold from the wages of the employee/defendant until the Garnishee Defendant receives a Garnishment Order from this Court directing the Garnishee Defendant to withhold the wages."***

This language must be contained in the body of the Order to Defendant and Notice and Summons to Garnishee Defendant under the to the Garnishee Defendant paragraph.

3. All Proceedings Supplemental Orders shall contain language explaining the process for Defendants to file Requests for Reduction of the Garnishment Orders. The following language must be contained in the actual Order under the "To the Defendant" portion as follows: ***"If you, the Defendant, believe that you are entitled to a reduction of the Garnishment Order due to financial hardship, you may file a written request to reduce the amount of the garnishment."***

4. All Orders regarding motions for reduction of garnishment shall include the following notice: ***"If the Plaintiff files a written Objection to this Motion within seven (7) days of the date of this Order, the Court shall schedule an immediate hearing on the Motion. If the Plaintiff does not timely file an Objection, the Defendant's Motion shall be Granted, and the garnishment shall be reduced to ten percent (10%)."*** (See revised "Order Regarding Motion For Reduction Of Garnishment" form, promulgated April, 2020.)

5. The Indiana Supreme Court issued an Order regarding bank garnishments on April 20, 2020. That Order is captioned "In re Petition to the Indiana Supreme Court to Engage in Emergency Rulemaking to Protect CARES Act Stimulus Payments From Attachment or Garnishment From Creditors." The Order states:

5.1. Courts shall issue no new orders placing a hold on, attaching, or garnishing funds in a judgment-debtor's account in a depository institution as defined in the Depository Financial Institutions Adverse Claims Act, I.C. 28-9-1-1, et seq., if those funds are attributable to a stimulus payment, except that this prohibition shall not apply to judgments or orders for payment of child support.

5.2. As for any previously issued court orders placing a hold on a judgment-debtor's account in a depository institution, the judgment-debtor shall be entitled, upon request, to a hearing (either in-person or remotely, as local circumstances permit), within two business days of the court's receipt of said request, to determine what funds in the account are attributable to a stimulus payment and for the judgment-debtor to assert any exemptions(s) under state or federal law. Courts shall treat such hearings as "essential" and "urgent" under this Court's orders of March 16 and 23, 2020 in 20S-CB-123.

All Proceeding Supplemental Orders seeking garnishment on a depository financial institution shall contain language explaining the process for Defendants to file Motion to Find Stimulus Funds Exempt. The following language must be contained in the actual order under the "To the Defendant" portion as follows: ***"If you, the Defendant, believe that you are entitled to an exemption because the funds in the account at issue include stimulus funds, you may file a written request for an immediate hearing to determine if funds are attributable to a stimulus payment."*** Upon the motion of judgment debtors, the Allen Superior Court Civil Division will schedule immediate hearings to determine "if those funds are attributable to a stimulus payment" and for the

judgment-debtor to assert any other applicable exemptions. Please note, on May 29, 2020 the Indiana Supreme Court issued an Order Extending Trial Courts' Emergency Tolling Authority and Setting Expiration of Other Emergency Orders which provides this April 20, 2020 Order shall now expire at 12:01 a.m. on January 1, 2021.

6. Account / Claims Calendar Hearings. All counsel for Plaintiffs are directed to utilize amended forms which remove the language that the Defendant is ordered to appear in Court and failure to appear may result in Defendant being held in contempt. These amended forms must now state: **"You are ordered to contact Plaintiff's counsel's office by telephone at _____ on _____ at _____ A.M./P.M."** Counsel shall conduct the proceeding as they would typically conduct a proceeding on this calendar. Plaintiffs may seek to default Defendants who fail to participate in the telephonic proceeding. Such a request for default must include proof of service of the telephonic proceeding, and a verified statement from counsel for Plaintiff that counsel complied with this protocol and was personally available to accept Defendant's telephone call at the time indicated for the proceeding. However, the Court will not otherwise penalize the Defendant for failure to appear at such a telephonic proceeding; thus, no Contempt Citations or Body Attachments shall issue. The Court shall issue a Garnishment Order upon the Defendant's failure to appear for a telephonic Proceedings Supplemental hearing. Counsel shall continue to file the CCS concerning the results of the hearing. This protocol does not apply to eviction proceedings. Account/Claims Calendar hearings may only be conducted telephonically through December 31, 2020 unless otherwise ordered by the Court.

7. CC Case Hallway Hearings. All counsel for Plaintiffs are directed to provide form orders which remove the language that the Defendant is ordered to appear in Court and failure to appear may result in Defendant being held in contempt. These amended form orders must now state: **"You are ordered to contact Plaintiff's counsel's office by telephone at _____ on _____ at _____ A.M./P.M"** Counsel shall conduct the proceeding as they would typically conduct a proceeding on this calendar. Plaintiffs may seek a Garnishment Order upon the Defendant's failure to appear for a telephonic Proceedings Supplemental hearing. However, the Court will not otherwise penalize the Defendant for failure to appear at such a telephonic proceeding; thus, no Contempt Citations or Body Attachments shall issue. Counsel shall continue to file the Proceedings Supplemental Report to the Court concerning the results of the hearing. CC Case Hallway hearings may only be conducted telephonically through December 31, 2020 unless otherwise ordered by the Court.

8. Small Claims Trial Calendar. Evidentiary hearings and trials are conducted in cases involving all types of cases within Small Claims Court jurisdiction, including property claims, injury claims, contract claims, evictions, Orders for Protection, exemption claims, body attachments, and requests to reduce wage and bank garnishment orders. All Small Claims trials will be conducted telephonically until normal operations resume. Orders are being issued in each case with detailed instructions concerning telephonic participation.

9. Evictions. Evictions for properties not secured by federally backed loans (i.e. Freddie Mac, Fannie Mae, FHA) will resume on July 1, 2020 unless otherwise directed by an Emergency Order from Governor Holcomb or other Order of this Court.

Inquiries for Small Claims Court may be emailed to: smallclaims@allensuperiorcourt.us
Telephone inquiries regarding Small Claims cases should be directed to the Small Claims Court at (260) 449-7103.

Amended forms for Motions and Orders are available under the Small Claims Court Forms section of the Allen County, Indiana Clerk of Courts website.