

An Overview Of Small Claims Litigation

The "jurisdiction" of a court is the power of that court to hear and decide a particular type of case. The small claims court has jurisdiction over civil cases in which the plaintiff is seeking a money judgment up to \$1,000 or recovery of personal property valued up to \$1,000.

In trials before the small claims court, witnesses shall be sworn. The judge shall conduct the trial in an informal manner so as to do substantial justice between the parties. The judges shall have the discretion to admit all evidence which may be of probative value although not in accordance with formal rules of practice, procedure, pleading or evidence, except that privileged communications shall not be admissible. The object of such trials shall be to determine the rights of the litigants on the merits and to dispense expeditious justice between the parties.

The successful plaintiff in a civil case will in most cases be awarded a money judgment as compensation for the defendant's wrongful act. The judgment is judicial recognition that the defendant is indebted to the plaintiff for a particular sum of money. The plaintiff is never assured of actually receiving the money, however, since the judgment can only be enforced out of property belonging to the defendant. Remedies to enforce judgments are available, but a defendant in a civil case is not subject to criminal sanctions for failing to pay a money judgment.

Preparing To File Suit In Small Claims Court

Locating the Defendant's Correct Name and Address

It is essential in filing suit that the plaintiff know the defendant's current address. Business that are trading under an assumed name are required by law to file a fictitious name statement in the clerk's office of the local circuit court. For example, if John Doe is doing business as "Doe Jewelry," he would be sued under the name "John Doe trading as Doe Jewelry." John Doe should have on file in the circuit court a fictitious name statement, indexed under "Doe Jewelry," and listing the real name of the owner of the business, the name of an agent if the owner resides elsewhere, and an address where the owner or agent can be found. For another example, if Jane Roe owns a corporation called Roe Corporation that is doing business under the name "Roe Jewelry," a suit would be brought against "Roe Corporation trading as Roe Jewelry." The fictitious name statement would indicate that Roe Corporation owned "Roe Jewelry" and would list an address for the corporation, as "Roe Corporation, c/o Jane Roe, 102 Park Street, Roeville, Virginia."

If the defendant is known to be a corporation, a simple way to locate the address is to call the registered agent division of the State Corporation Commission in Richmond, (804) 371-9733.

That office will provide the name and address of the corporation's registered agent. The address needed to bring suit against the

corporation is, for example, "XYZ Corp., c/o John Doe, Registered Agent 1402 Fish Lane, Fishtown, Virginia."

If the defendant is an individual and the home address cannot be located, a work address will suffice, although a home address is preferable.

Filing Suit In Small Claims Court

In the small claims division of the general district court, the plaintiff will be requested to fill out a civil warrant or a civil summons form which contains space for the details of your claim. If the plaintiff is seeking only a money judgment, he or she should prepare and file a *warrant in debt*. If the plaintiff is seeking to obtain possession of specific personal property that the plaintiff claims is being wrongfully withheld by the defendant or that was given by the defendant as collateral to secure a loan now in default, the plaintiff should prepare and file a *warrant in detinue*. The form may be filled out by a nonlawyer representing himself or herself or acting as a regular and actual employee of a business (see **The Question of Representation**, discussed later). The plaintiff will need to bring to the clerk the following: (1) the name of the defendant, (2) the current address of the defendant, (3) the amount of the plaintiff's claim, (4) the basis of the claim, and (5) sufficient funds to pay the filing fee and any sheriff's fee for serving the warrant. The amount required may vary, depending upon the court, so you may want to inquire with the court about the cost. The fees must be paid in cash, by certified check, or by money order. If you are preparing a civil warrant, you should make two extra copies, one to keep for your own records and one to mail to the defendant, *in addition* to the number of copies requested by the clerk for processing by the court.

In preparing a *warrant in debt*, the claim must specify a dollar amount and the reason for the claim. In preparing a *warrant in detinue*, the plaintiff must describe the specific property being sought, state its value, and state the basis of the claim for possession of the property.

One additional step is taken by careful plaintiffs. A copy of the civil warrant is sent by first-class mail by the plaintiff to the defendant at least ten (10) days before the date when the plaintiff and defendant are to come to court for their first appearance in the dispute. Further, the plaintiff fills out a *Certificate of Mailing*, which is either delivered to the judge at the trial or delivered to the clerk's office before the date of the trial. Otherwise, the plaintiff cannot get judgment on the trial date if the defendant fails to come to court (which happens frequently), and the case will be continued until the required ten-day notice has been given.

Service of Process

After the clerk completes the clerk's portion of the civil warrant prepared by the plaintiff, these papers are sent to the sheriff of the county or city where the defendant is located or the plaintiff may utilize a private process server to serve the papers on the defendant. A deputy of the sheriff's department or a private process server will deliver the civil warrant to the defendant, thus providing notification of the suit. This notification is called "service of process."

If the civil warrant lists the defendant's home address, process may be served by the deputy sheriff or private process server delivering the civil warrant to the defendant or to any member of the defendant's family over 16 years of age who is present at the defendant's "usual place of abode" (usually his or her home). If neither the defendant nor anyone in the defendant's family can be located, the deputy sheriff or private process server may "post" (attach) the civil warrant to the front door of the defendant's usual place of abode. In some cases, the deputy sheriff or private process server will not be able to serve the papers by the above methods. They will be returned to court with the deputy sheriff's or private process server's written statement that the defendant was "not found" (that he or she was unable to serve the papers on the defendant). Without service of process having been made, the court cannot try the case. If you are suing a corporation, an out-of-state defendant, or if service of process cannot be made by the deputy sheriff or private process server, you should contact the clerk to inquire as to how service of process may be issued and what fees (if any) are involved.

If the only available address of the defendant is a work address, the civil warrant *must* be served in person. Sometimes, it can be difficult for a deputy sheriff or private process server to locate someone at work, and the sheriff's department or private process server will only make a limited number of attempts to serve process before returning the civil warrant or summons to the court unserved.

Return of the Warrant

The civil warrant will include a specific date and time when the defendant and the plaintiff are to come to court for their trial concerning their dispute. This date is sometimes called the "return date". All of the cases scheduled for trial on the same date may require the parties to appear at the same time. However, the cases will be called *one at a time*, and the parties will approach the judge concerning their case.

If the civil warrant was served on the defendant in a legally correct way and he or she fails to appear on the return date, a "default judgment" may be entered against the defendant. In this situation, the court will enter a judgment for the plaintiff on the trial date based on evidence from the plaintiff supporting the claim. The defendant has lost the case.

If the civil warrant was served by "posting" (attaching) the civil warrant to the front door of the defendant's residence, an additional step is required before default judgment will be entered. The plaintiff must certify to the court that at least ten days before the entry of default judgment, the plaintiff mailed to the defendant at his or her residence, by ordinary first-class mail, a copy of the civil warrant. A form Certificate, form DC-414, may be used for this purpose. Otherwise, the case will be continued, and the plaintiff must return to court for the default judgment after the ten-day period has elapsed.

If the plaintiff fails to appear in court, the defendant may ask the judge to decide the case in the defendant's favor.

The defendant has the right to remove the case to the general district court by completing the *Removal to General District Court*

form on the back of the civil warrant and giving it to the clerk or judge. This notice must be filed before the judge decides the case.

Trial Procedures

The Question of Representation

All parties shall represent themselves in actions before the small claims court except as follows:

1. A corporate or partnership plaintiff or defendant may be represented by an owner, a general partner, an officer or an employee of that corporation or partnership. An attorney may serve in this capacity if he is appearing pro se, but he may not serve in a representative capacity.

2. A plaintiff or defendant who, in the judge's opinion, is unable to understand or participate on his own behalf in the hearing may be represented by a friend or relative if the representative is familiar with the facts of the case and is not an attorney.

If a party wishes to call witnesses besides himself, he or she should consider having them served with a subpoena, even if the witness has willingly agreed to appear at the trial or is a defendant. If the witness has received the subpoena at least five days before trial and if his or her testimony is important to the case, the judge will usually continue the case until a later date (if requested) should the witness not appear. Otherwise, the trial usually will proceed without that witness.

To subpoena a witness, the party must file a *Request for Witness Subpoena*, form DC-325, in the Small Claims Division of the clerk's office at least 10 days before the trial. This requirement is made so that the witness can receive the subpoena at least five days before trial as required by law. The party will need to give the name and current home address of the prospective witness.

It is important always to notify your witnesses (except the other party) before they receive their subpoenas. Witnesses taken by surprise may be angered, and less willing to be of use in court. Explain to a witness why you need his or her testimony and try to convince the witness to come willingly. Any party is entitled to subpoena any witness, willing or not, but a willing witness will be more helpful in court.

You will be required to pay an additional sheriff's fee for the service of any subpoenas for witnesses.

Trial

Each case is tried in an informal manner. Both plaintiff and defendant will be given an opportunity to introduce evidence, ask questions of the witnesses, and to explain to the judge why the judge should enter judgment in his favor. While the judge has the discretion to admit evidence of probative value even if it does not comply with all of the legal requirements, he may not allow witnesses to testify until they have been sworn and he may not consider "privileged communications" (statements by certain people barred by law from being used in a trial).

Judgment Is Entered

At the end of the case, the judge will either enter judgment for the plaintiff or the defendant. If judgment is for the plaintiff, it may be the result sought by the plaintiff, or it may be less. The person who has the burden of proof must not only prove that he or she is entitled to win the case, but must prove the amount due. If a party wishes to appeal the judgment and the amount in dispute exceeds \$50, that party may file an appeal of the case to circuit court for a new trial. Form DC-475, *Civil Appeal Notice*, is used for filing an appeal. If an appeal is filed, the judge will set an appeal bond. However, the appeal will be tried in circuit court in a formal manner strictly following all of the rules of evidence and procedure, and in which lawyers usually represent the parties.

After The Judgment Is Entered

Appeals

So long as the amount in controversy exceeds \$50, either the plaintiff or the defendant has a right to appeal any decision of the general district court to the circuit court, the next highest court in the Virginia system. After a party notes an appeal, which is done usually at the end of the trial but *must be done within ten days* after the entry of judgment, the judge will set an appeal bond of a certain amount of money. Within 30 days after judgment is entered, an appealing party must perfect the appeal by posting the required bond with the clerk of the court. In circuit court, a jury may be requested if the claim exceeds \$100.

Enforcing the Judgment

The judgment of the court is, in itself, nothing but an official statement in the court's records that the defendant, now also called the *judgment debtor*, owes the plaintiff, the *judgment creditor*, a certain amount of money with interest. The judgment must be enforced out of the assets of the defendant.

To enforce the collection of the judgment, the judgment creditor may contact the general district court clerk's office for additional information on court procedures to collect the judgment, including:

- Using a *Summons to Answer Interrogatories* for getting information about the defendant and his assets in order to use court collection procedures.
- Obtaining an *Abstract of Judgment* to take to circuit court for recording as a lien against real estate.
- Obtaining a *Writ of Fieri Facias* to have the judgment debtor's personal property sold at public auction to pay the judgment.
- Obtaining a *Garnishment Summons* to get payment from the judgment debtor's bank account or earnings.

For more information, see the following World Wide Web home page address: <http://www.courts.state.va.us>

