

Small Claims Court Procedures*

Introduction

The small claims court is a special division of the general district court. The small claims court has jurisdiction (the authority to hear and decide a particular type of case) over civil cases in which the plaintiff is seeking a money judgment up to \$5,000 or recovery of personal property valued up to \$5,000. In trials before the small claims court, the judge conducts the trial in an informal manner. Parties may not be represented by attorneys. The judge has the discretion to admit all evidence which may be helpful in providing proof, even though it may not be in accordance with formal rules of practice, procedure, pleading or evidence. The statutes governing small claims courts and their procedures can be found in the Code of Virginia, §§ [16.1-122.1](#) through [16.1-122.7](#).

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 form, which contains space for the details of the claim. The form may be filled out by a nonlawyer representing himself or herself (see **The Question of Representation**, discussed under **Trial Procedures**). If the plaintiff is seeking only a money judgment, he or she should prepare and file a *warrant in debt* ([Form DC-402 Warrant in Debt - Small Claims Division](#)) ([Instructions for Completing Form DC-402](#)). In preparing a *warrant in debt*, the claim must specify a dollar amount and the reason for the claim. 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* ([Form DC-404 Warrant in Detinue - Small Claims Division](#)) ([Instructions for Completing Form DC-404](#)). 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.

The following information will be needed by the plaintiff to complete either form: (1) the name of the defendant, (2) the current address of the defendant, (3) the amount of the plaintiff's claim, and (4) the basis of the claim. The plaintiff must bring to the clerk of the general district court sufficient funds to pay the required filing fee and any sheriff's fee for serving the warrant. The amount required may vary, depending upon the court. Fees may be calculated using the General District Court Civil Filing Fee Calculation system, which is available using the following link: [General District Court Civil Filing Fee Calculation system](#). The plaintiff may also ask the clerk about the cost. Contact information for general district courts can be found at <http://www.vacourts.gov/courts/gd.html>. In addition to the number of copies requested by the clerk for processing by the court, it is recommended that the plaintiff make two extra copies, one to keep and one to mail to the defendant.

The plaintiff should send a copy of the civil warrant to the defendant by first-class mail 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 should fill out a *Certificate of Mailing*

* *The information contained in this document is provided as general information only and is not legal advice.*

Posted Service ([Form DC- 413 Certificate of Mailing Posted Service](#)) ([Instructions for Completing Form DC-413](#)), which is either delivered to the judge at the trial or delivered to the clerk's office before the date of the trial. If these steps are not taken, and the defendant fails to come to court (which happens frequently), the case will be continued until the ten-day notice requirements have been met.

Locating the Defendant's Correct Name and Address

It is essential in filing suit that the plaintiff knows the defendant's current address. This information is necessary to provide legally valid notice, known as "service of process." If service of process is not made according to law, the plaintiff's lawsuit may not go forward. Businesses 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. Another example is 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."

When a defendant is a corporation, suit may be filed against the corporation by serving the registered agent for the corporation. A simple way to locate the name and address of the corporation's registered agent is to call the Service of Process Division in the Office of the Clerk for the State Corporation Commission in Richmond, (804) 371-9733 or toll free in Virginia, 1-866-722-2551, or visit its [Web site](#) to access the Clerk's Information System. For example, the address needed to bring suit against the corporation may be "XYZ Corp., c/o John Doe, Registered Agent, 1402 Fish Lane, Fishtown, Virginia." Providing as complete an address as possible, including the name of the city or county, zip code and apartment number, if any, will improve the chances of obtaining successful service of process. A post office box number alone is insufficient for service.

If the defendant is an individual and the home address cannot be located, a work address will suffice, although a home address is preferable. 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 to locate someone at work, and only a limited number of attempts to serve process may be made before the civil warrant or summons is returned to the court unserved.

Service of Process (See Virginia Code §§ [8.01-296](#) and [8.01-299](#))

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

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 age sixteen years or older 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. The papers then 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). Unless service of process is made, the court cannot try the case.

Return of the Warrant

The civil warrant will include a specific date and time when the defendant and the plaintiff must come to court for the trial of their dispute. This date is sometimes called the "return date." Numerous cases are scheduled for trial on the same date. Cases will be called one at a time, and when called, 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 does not appear on the return date, a "default judgment" may be entered against the defendant. 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. 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 does not appear in court on the return date, the defendant may ask the judge to decide the case in the defendant's favor.

Before the judge decides the case, the defendant has the right to remove the case to the regular docket of 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.

Trial Procedures

The Question of Representation

All parties represent themselves in actions before the small claims court except as provided by Virginia Code § [16.1-122.4](#). These exceptions are:

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 "unless he is doing so for the sole purpose of removing the case to the general district court."
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 other persons as witnesses, 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 Request for Witness Subpoena](#)) ([Instructions for Completing Form DC-325](#)), in the small claims division of the clerk's office at least ten days before the trial. This timing is required 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. The person subpoenaing the witness will be required to pay an additional sheriff's fee for the service of each witness subpoena.

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

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 explain to the judge why the judge should enter judgment in his or her favor. While the judge has the discretion to admit useful evidence even if it does not comply with all of the legal requirements, the judge may not allow witnesses to testify until they have been sworn or 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 enter judgment for either 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 plaintiff has the burden of proof, which means he or she must not only prove that he or she is entitled to win the case, but also must prove the amount due. If a party wishes to appeal the judgment and the amount in dispute exceeds \$20, the party may file an appeal of the case to the circuit court for a new trial. The case will be heard *de novo* (as a completely new case). Notice of the appeal must be filed in the general district court where the case was heard *within ten days* after the judgment is entered. District Court Form DC-475, *Civil Appeal Notice*, which is used for filing an appeal, can be obtained from the general district court clerk's office. If an appeal is filed, the judge will set an appeal bond. Within thirty days after judgment is entered, an appealing party must perfect the appeal by posting the required bond with the clerk of the court. The appeal will be tried in circuit court in a formal manner strictly following all of the rules of evidence and procedure. Often, lawyers represent the parties. In circuit court, a jury may be requested if the claim exceeds \$20.

Enforcing the Judgment

The judgment of the court is 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. Unless the defendant willingly pays the judgment, the judgment must be enforced by the plaintiff in order for the plaintiff to receive the judgment amount.

To enforce the collection of the judgment, the plaintiff (*judgment creditor*) may choose to use any of a number of legal procedures, including:

- Using a *Summons to Answer Interrogatories* ([Form DC- 440 Summons to Answer Interrogatories](#)) ([Instructions for Completing Form DC-440](#)) to get information about the defendant and his assets in order to use court collection procedures. See Virginia Code § [8.01-506](#).
- Obtaining an *Abstract of Judgment* to take to circuit court for recording as a lien against real estate. See Virginia Code §§ [8.01-458](#) through [8.01-465](#).
- Obtaining a *Writ of Fieri Facias* to have the judgment debtor's personal property sold at public auction to pay the judgment. See Virginia Code §§ [8.01-466](#) through [8.01-505](#).
- Obtaining a *Garnishment Summons* ([Form DC-451 Garnishment Summons](#)) ([Instructions for Completing Form DC-451](#)) to secure payment from the judgment debtor's bank account or earnings. See Virginia Code §§ [8.01-511](#) through [8.01-525](#).

The choice of procedure used to enforce the judgment will depend on what, if any, assets the defendant has available.

VIRGINIA'S JUDICIAL SYSTEM

Notice Regarding the Americans with Disabilities Act and Requests for Accommodations by Persons with Disabilities

The Americans with Disabilities Act (ADA) of 1990 was enacted to ensure that all qualified individuals with disabilities enjoy the same opportunities that are available to persons without disabilities. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications. The ADA directly affects state courts as providers of public programs and services. In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., the Supreme Court of Virginia and the courts of the Commonwealth of Virginia (collectively referred to as "Virginia's Judicial System") will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

Virginia's Judicial System does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the ADA.

Effective Communication: Virginia's Judicial System will generally, upon request, provide appropriate aids and services for qualified persons with disabilities so they can participate equally in Virginia's Judicial System programs, services, and activities, including qualified interpreters, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

Modifications to Policies and Procedures: Virginia's Judicial System will make all reasonable modification to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in Virginia's courts, even where pets are generally prohibited.

Requests for Accommodation: A request for accommodation should be made to the relevant clerk if the request relates to a pending case or activity of a particular court. Otherwise, the request should be made to the ADA Coordinator at the address below. Procedures for making a request, as well as a form for doing so, are available through the ADA Coordinator and on Virginia's Judicial System website, www.vacourts.gov.

No requirement to alter programs and services: The ADA does not require Virginia's Judicial System to take any action that would fundamentally alter the nature of its programs or services or impose an undue financial or administrative burden.

Complaints regarding accessibility: Complaints concerning a program, service, or activity of a circuit court clerk's office should be directed to that clerk. Other complaints will be handled pursuant to grievance procedures adopted by the Office of the Executive Secretary. The procedures are available through the ADA Coordinator, and on Virginia's Judicial System website, www.vacourts.gov.

No surcharge: Virginia's Judicial System will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

Questions about this Notice – Please submit your questions to: ADA Coordinator
Renée Fleming Mills, Ph.D.
Office of the Executive Secretary
Supreme Court of Virginia
100 N. 9th Street
Richmond, Virginia 23219
Fax: 804-786-0109
E-mail: ADACoordinator@vacourts.gov