

## **Rules of Small Claims Procedure**

### **RULE 1. SCOPE OF RULES**

These rules govern the procedure in the superior courts in all small claims actions brought under chapter 187 of Title 12, Vermont Statutes Annotated. These rules are the only procedural rules governing such actions except to the extent that other rules are expressly adopted by reference. These rules shall be construed to secure the simple, informal, and inexpensive disposition of every action subject to them.

### **RULE 2. JURISDICTION; PLACE OF SUIT; FILING FEE**

**(a) Jurisdiction.** Actions on claims for money damages not exceeding \$5,000.00 may be brought under these rules, except claims based on defamation. Claims for relief other than money damages may not be brought under these rules. A claim in excess of \$5,000.00 may not be split into two or more claims under these rules.

**(b) Place of suit.** An action under these rules may be brought in the superior court of the county in which the plaintiff or the defendant resides. On motion by a party or on the judge's initiative, for the convenience of the parties, witnesses, or counsel and in the interest of justice, the judge may order that the place of trial be changed to the superior court of another county in which a party resides.

**(c) Judicial bureau decisions.** A certified copy of a judgment of the judicial bureau which has become final and requires the payment of a penalty not exceeding \$5,000.00 may be filed under these rules and will be deemed a final small claims judgment. Such a small claims judgment is deemed to have been entered retroactive to the date it was entered in the judicial bureau and is not subject to appeal under these rules.

**(d) Filing fee.** The required filing fee of \$50 for claims of \$1000 or less, and \$75 for claims over \$1000 must be paid.

**(e) Non-transferability.** A claim or counterclaim filed in the small claims docket of a superior court may not be transferred to the civil docket of a superior court.

### **RULE 3. PLEADINGS; SERVICE OF PLEADINGS**

**(a) Pleading by plaintiff.** To bring a small claims action, the plaintiff must file with the court clerk, on a complaint form provided by the court clerk, information identifying the plaintiff and the defendant and a concise statement of the nature and amount of the claim. If any document is attached to the complaint, the plaintiff must supply the court clerk with a copy for the defendant. The court clerk will assign a docket number to the claim and sign the summons to the defendant.

**(b) Service of complaint on the defendant.** The court clerk will send the summons and complaint with forms for acknowledging receipt of them, and a form for answering the complaint, to the defendant by first class mail at the address provided by the plaintiff. The defendant must sign the acknowledgment of receipt of the summons and complaint and file this acknowledgment with the court clerk within 20 days from the date of mailing by the court clerk. If the acknowledgment is not

filed on time, the plaintiff will be notified by the court clerk and will need to have the summons and complaint, with a form for answering the complaint, served by a sheriff (or another person authorized to serve process) at the plaintiff's expense. Alternatively, if the defendant does not reside in the state, the plaintiff will need to have the summons and complaint, with a form for answering the complaint, served pursuant to Rule 4(e) of the Vermont Rules of Civil Procedure at the plaintiff's expense. The return of service from the process server must be filed by the plaintiff with the court clerk within 30 days from the mailing by the court clerk to the plaintiff of notice of the need for service by a process server; this time limit may be extended by the court if an extension is requested in writing by the plaintiff. The court may dismiss the plaintiff's claim if the return of service is not filed within the 30-day time limit, or within a longer time period if an extension is allowed by the court.

**(c) Attachment; trustee process.** Attachment and trustee process are not available prior to judgment.

**(d) Pleading by defendant.** If the defendant acknowledges receipt from the court clerk of a summons and complaint, or is served by a process server with a summons and complaint, the defendant then has 20 days in which to fill out and file with the court clerk an answer to the complaint. The court clerk will mail a copy of the answer to the plaintiff. The defendant may include in the answer any counterclaim that the defendant has against the plaintiff, which arises from the same occurrence as the plaintiff's claim, but any judgment on a counterclaim may not exceed the limit for small claims. The required filing fee of \$15 for claims of \$500 or less, and \$25 for claims over \$500 must be paid.

**(e) Default by defendant.** If a defendant fails to file a timely answer with the court clerk, the court clerk will notify the plaintiff that he or she must file a motion for default judgment, with an accompanying affidavit, within 30 days

from the date of the court clerk's notice. The court clerk will provide forms for the motion and affidavit. The court may dismiss the plaintiff's claim if the motion and affidavit are not filed on time.

**(f) Service of default judgment.** The court clerk will serve a default judgment on a defendant by first class mail and make a docket entry of such mailing. If the mailing to the defendant is returned to the court clerk because it was undeliverable, the plaintiff will be notified by the court clerk and given the opportunity to have the default judgment served on the defendant by a sheriff (or other person authorized to serve process) at the plaintiff's expense.

**(g) Reopening a default judgment.** A motion to reopen a default judgment is timely if filed in writing with the court clerk prior to or at the time of the first financial disclosure hearing relating to the default judgment. If no motion for a financial disclosure hearing has been filed, a motion to reopen a default judgment must be filed in writing with the court clerk no later than 90 days after entry of a default judgment, unless the judgment debtor proves to the court that he or she did not have notice of the default judgment. The required \$50.00 fee for filing a motion, as specified in a current schedule published by the Court Administrator, must be paid. A default judgment will not be reopened unless good cause is shown.

#### **RULE 4. MOTIONS**

The only motions permitted are (a) a motion for judgment by default, (b) a motion to reopen a default judgment, (c) a motion to extend the time for service of the summons and complaint by a sheriff or other person authorized to serve process, (d) a motion for continuance of trial which will be granted by the court only for good cause, (e) a motion to dismiss for lack of personal jurisdiction over the defendant, (f) a motion to dismiss for lack of subject matter jurisdiction, and (g) any motion necessary to request a procedure available under these rules. Any of these permitted motions must be filed in writing.

## **RULE 5. LIMITED AVAILABILITY OF JURY TRIAL**

**(a) To plaintiff.** A plaintiff is deemed to have waived trial by jury on any claim in an action brought under these rules.

**(b) To defendant.** If a defendant files with the clerk, on or before the deadline for filing an answer to a small claim, a written request for trial by jury accompanied by an affidavit, reciting specific factual issues requiring resolution and that the affidavit is intended in good faith, and pays the jury fee of \$10.00, the defendant will be entitled to have a trial by jury governed by the Vermont

Rules of Civil Procedure and the Vermont Rules of Evidence. A defendant is deemed to have waived trial by jury on a counterclaim by asserting the counterclaim under these rules.

## **RULE 6. TRIAL PROCEDURE**

**(a) Usual procedure.** Unless a trial by jury has been properly requested, the court will conduct the hearing on the merits of a small claim in a summary manner. Upon motion in a nonjury hearing, participation of a party or testimony of a witness may be allowed by telephone in the judge's discretion. All witnesses will testify under oath and will be examined by the judge with the objective of laying out the evidence pertaining to the contentions reasonably available to the parties. The parties or their attorneys may supplement the judge's examination subject to the judge's authority to protect witnesses against unfair imposition and to avoid needless repetition. The judge shall make findings of fact orally on the record after the close of evidence, state the relevant conclusions of law, and enter a judgment. Alternatively, the judge may take a case under advisement and issue a written decision.

**(b) Evidence.** If the trial is by jury, the Vermont Rules of Evidence apply. If the trial is by court, evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and the Vermont Rules of Evidence are inapplicable except for the rules respecting privilege.

**(c) Record.** Trials will be electronically or stenographically recorded. If no appeal is taken within the prescribed time, the record may be discarded or erased.

**(d) Representation.** Any party is entitled, but not required, to be represented by an attorney. The appearance and withdrawal of attorneys is governed by Rule 79.1 of the Vermont Rules of Civil Procedure.

**(e) Form of judgment.** A judgment in favor of the plaintiff on a claim, or in favor of the defendant on a counterclaim, may include a provision allowing payment of the judgment in specified installments and will include the filing fees, costs of service of process, and other court costs incurred by the prevailing party.

## **RULE 7. FINANCIAL DISCLOSURE HEARING**

**(a) Availability.** If a judgment awarded as a lump sum remains unpaid for 30 days after the entry of judgment, or if an installment on a judgment is overdue for 30 days or longer, the judgment creditor may file a motion for a financial disclosure hearing on a form provided by the court clerk. The required \$50 fee for filing a motion, as specified in a current schedule published by the Court Administrator, must be paid. A motion for financial disclosure may not be filed more often than once in three months.

**(b) Service and notice of hearing.** Upon receiving such a motion, the court clerk will set a date for hearing and issue a notice of hearing advising the judgment debtor to appear at the hearing to disclose his or her ability to pay the overdue judgment or installment and bring with him or her a completed financial statement on the form supplied with the notice of hearing. The clerk will serve on all parties by first class mail the notice of hearing and the list of exemptions appearing on Form 34 of the Vermont Rules of Civil Procedure.

**(c) Hearing and order.** If the judge makes written findings, based on the evidence presented at the hearing, that the judgment has been unpaid for 30 or more days or that an installment has been overdue for 30 or more days, and that the judgment debtor has the present ability to pay the overdue judgment or installment, the court will order the judgment debtor to make such payments as are deemed appropriate. If the judgment debtor fails to appear or fully disclose at the hearing, the court will order full payment forthwith. In its discretion, the court may continue a financial disclosure hearing to a later date or may restrict the frequency of filings of future motions for a financial disclosure hearing.

**(d) Service of order.** If service of the order resulting from the financial disclosure hearing is not accepted by the judgment debtor after the hearing, the judgment creditor must have the order served on the judgment debtor by a sheriff (or other person authorized to serve process) at the judgment creditor's expense, and the return of service must be filed by the judgment creditor with the court clerk before any motion for contempt is filed.

#### **RULE 8. CIVIL CONTEMPT**

**(a) Availability.** If a judgment debtor fails to comply with a payment order issued as a result of a financial disclosure hearing, the judgment creditor may file a written motion for civil contempt with the court clerk. The required \$50 fee for filing a motion, as specified in a current schedule published by the Court Administrator, must be paid.

**(b) Issuance and service of judicial summons.** Upon receiving such a motion, the court clerk will set a date for hearing and issue a judicial summons requiring the judgment debtor to appear and present evidence showing why he or she should not be held in contempt of court. The judicial summons will include notice to the judgment debtor that he or she may be represented by legal counsel at the hearing. The judgment creditor must have the judicial summons served on the judgment debtor by a sheriff (or other person authorized to serve process) at the judgment creditor's expense, but no attendance or mileage fee need be paid to the judgment debtor. The return of service must be filed by the judgment creditor with the court clerk no later than the beginning of the hearing.

**(c) Hearing.** If the judgment debtor fails to appear at the hearing on the motion for civil contempt, the court ordinarily will hold the judgment debtor in contempt. If the judgment debtor does appear at the hearing, the court must make written findings, based on the evidence presented at the hearing, as to whether a further order for payment will be issued or the judgment debtor will be held in contempt.

#### **RULE 9. OTHER ENFORCEMENT OF JUDGMENTS**

**(a) Trustee process.** If a judgment is not paid within 30 days and no appeal is pending, the judgment creditor may seek trustee process against earnings or other property subject to trustee process under the procedure prescribed in Rule 4.2 of the Vermont Rules of Civil Procedure. The required \$50 filing fee for filing a motion, as specified in a current schedule published by the Court Administrator, must be paid.

**(b) Writ of execution.** If a judgment is not paid within 30 days and no appeal is pending, the judgment creditor may obtain a writ of execution by filing a written request on a form provided by the court clerk. The judgment creditor must have the writ of execution served by a sheriff or other person authorized to serve process on the judgment debtor at the judgment creditor's expense. The judgment creditor must deliver to the officer or other person levying execution the list of exemptions appearing in Form 34 of the Vermont Rules of Civil Procedure. The officer or other person will serve the list on the judgment debtor with a copy of the writ of execution. The return of service must be filed with the court clerk by the judgment creditor. The required \$50 fee for obtaining a writ of execution, as specified in a current schedule published by the Court Administrator, must be paid.

**(c) Judgment lien.** If a judgment is not paid within 30 days and no appeal is pending, the judgment creditor may purchase a certified copy of the judgment from the court clerk and file it for recording with the town or city clerk of a municipality where the judgment debtor owns real estate.

## **RULE 10. APPEALS**

**(a) Notice of appeal.** Any party may appeal to superior court from a small claims judgment by filing a notice of appeal with the clerk of the superior court within 30 days (extended to the next business day of the court if the last day is not a weekday or is a federal or state holiday) from the entry of the judgment. The notice of appeal should contain a statement of the basis of the appeal, but such a statement is not required to initiate the appeal. A form for the notice of appeal is available from the court clerk. The required \$100 filing fee, as specified in a current schedule published by the Court Administrator, must be paid. Upon filing of the notice of appeal, the clerk shall serve copies of the notice upon all parties to the small claims case.

**(b) Stay.** During the time for filing a notice of appeal, and pending decision of an appeal if a notice of appeal is filed, the judgment is stayed.

**(c) Record on appeal.** The record on appeal consists of the docket entries, the case file in the court clerk's office including exhibits that were admitted at the trial, and the electronic recording or transcript of the trial. If a transcript is needed, the appealing party must order it, on a form available from the court clerk, with a deposit of the estimated cost within 15 days after filing the notice of appeal, and the appealing party must file the completed original transcript with the court clerk when it has been completed.

**(d) Appellate hearing.** The appeal is limited to questions of law and will be heard by a judge who has not participated in any way in the judgment being appealed.

**(e) Further appeal.** There is no absolute right to appeal from a decision rendered in an appeal to the superior court. Permission to appeal to the Vermont Supreme Court may be requested pursuant to Rule 6(b) of the Vermont Rules of Appellate Procedure. The request for permission must be filed with the clerk of the superior court within 10 days from the entry of the judgment to be appealed from. If a timely request for such permission is not filed with the clerk of the superior court, or permission to appeal is denied by the Vermont Supreme Court, the court clerk will notify all parties that the appellate decision of the superior court is final. If permission to appeal is granted by the Vermont Supreme Court, further proceedings are governed by the Vermont Rules of Appellate Procedure.

## **RULE 11. WAIVER OF COURT COSTS**

A plaintiff or defendant may obtain relief from filing fees and other court costs by submitting an application on a form provided by the court clerk. The form must be filled out and filed with the court clerk. Eligibility for relief is governed by Rule 3.1 of the Vermont Rules of Civil Procedure. The clerk will make a decision based on the application. The decision of the court clerk may be appealed to the presiding judge of the superior court by giving written notice to the court clerk within seven days from the decision.

### **RULE 12. SATISFACTION OF JUDGMENTS**

When a judgment is fully satisfied, the judgment creditor must notify the court clerk within 20 days after receipt of satisfaction, and the court clerk will enter satisfaction of the judgment on the docket. If notification of satisfaction is not entered on the docket within 20 days after receipt of satisfaction, the judgment debtor may move for an order that the judgment be deemed satisfied. There is no filing fee for this motion. Unless the judgment creditor, within 20 days after the mailing to him or her by the court clerk of a notice of the motion, files a written objection with the court clerk, the court will order an entry on the docket of satisfaction of the judgment.

### **RULE 13. MATTERS NOT COVERED BY THESE RULES**

When matters arise that are not covered by these rules, the court will proceed by analogy to any applicable provision of the Vermont Rules of Civil Procedure that is consistent with these rules and with the objective of securing a simple, informal, and inexpensive disposition of the claim.

### **RULE 14. TITLE**

These rules may be known and cited as the Vermont Rules of Small Claims Procedure.

### **Glossary**

**Acknowledgment:** The defendant signs an “Acknowledgment of Receipt of Summons and Complaint.” This method of service or “being served” a small claims complaint and summons.

**Affidavit:** A written statement of facts, made under oath.

**Appeal:** An appeal is the opportunity to request that a higher court review the law as applied to the case. It is not a new trial on the facts of the case.

**Answer:** A court document on which the person being sued either admits or denies that money is owed.

**Complaint:** A court document on which a person filing a lawsuit states who is being sued, why, and for how much.

**Default Judgment:** An official decision of the court in favor of the “Plaintiff” due to the failure of the “Defendant” to answer the complaint or take some other required step.

**Defendant:** The person or business that is being sued in court.

**Docket Number:** A number assigned to a court case by court clerk.

**Judgment:** An official decision of the Court stating who won the case and how much that person won.

**Plaintiff:** The person or business that files suit in court.

**Service, “to be served:”** Service means that the defendant has received the summons and complaint in accordance with the rules. The case can then proceed.

**Subpoena:** A document ordering a witness to appear at a hearing.

**Summons:** A document, which notifies the defendant that a court suit has been filed against him or her.

**Trustee process against earnings:** This procedure authorizes the court to order an employer to withhold a reasonable amount of money from the wages to pay a court judgment.

**Writ of execution:** A court document, addressed to a sheriff, issued after judgment, directing the sheriff to collect money or other goods from the defendant.