

**STATE OF VERMONT
VERMONT SUPREME COURT
MAY TERM, 2015**

**Order Vacating Orders of February 25, 2015, and March 25, 2015, and
Promulgating Emergency Amendments to the Vermont Rules of Small Claims Procedure**

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That the order of February 25, 2015, promulgating emergency amendments to the Vermont Rules of Small Claims Procedure, and the order of March 25, 2015, extending the effective date of that order to May 4, 2015, be vacated.

2. That Rule 3 of the Vermont Rules of Small Claims Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

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.~~

(1) To bring a small claims action, the plaintiff must file two copies of the complaint and any attachments with the court clerk on a form obtained from the Judiciary website or at the clerk's office and must pay the required filing fee as specified in a current schedule published by the Court Administrator and provide the clerk with a self-addressed envelope with sufficient postage for return purposes.

(2) The complaint must contain information identifying the plaintiff and the defendant and a concise statement of the nature and amount of the claim.

(3) If any document is attached to the complaint, the plaintiff must supply the court clerk with a copy.

(4) The clerk will assign a docket number to the claim, sign the summons to the defendant, and provide the signed summons and file-stamped complaint to the plaintiff.

~~(b) Service of complaint on the defendant. The court clerk will send the summons and complaint with a form for answering the complaint, to the defendant by first class mail at the address provided by the plaintiff. If the defendant does not file an answer with the court clerk within 30 days from the date of mailing by the court clerk, 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. In this event, the court may find the defendant liable for any costs of service incurred by the plaintiff. 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.

(1) Service by First Class Mail. Within seven days after receipt of the signed summons bearing the docket number, the plaintiff must send the summons and complaint and any attached document, with the court-approved answer form and instructions, to the defendant by first class mail. The plaintiff must, at the same time, file with the clerk the applicable certificate of service, which is available on the Judiciary website or at the clerk's office.

(2) Personal Service. If the defendant does not file an answer with the court clerk within 30 days from the date on which the plaintiff mailed the summons and complaint:

(A) The plaintiff must have the summons and complaint and any attached document, with the court-approved answer form and instructions, served personally on the defendant by a sheriff or other authorized person with the plaintiff initially paying the costs of service.

(B) If the defendant does not reside in the state, the plaintiff must have the summons and complaint and any attached document, with the court-approved answer form and instructions, served personally on the defendant pursuant to Rule 4(e) of the Vermont Rules of Civil Procedure with the plaintiff initially paying the costs of service.

(C) The return of service from the sheriff or other authorized person who served it must be filed by the plaintiff with the court clerk within 60 days from the date on which the plaintiff mailed the summons and complaint. This time limit may be extended by the court if an extension is requested in writing by the plaintiff.

(D) The judge may find the defendant liable for any costs of service incurred by the plaintiff.

(E) The judge may dismiss the plaintiff's claim if the defendant has not filed an answer to service made under (1), and the return of service under (2)(C) is not filed within the 60-day time limit, or within a longer time period if an extension is allowed by the judge.

* * * * *

(d) Pleading by defendant. ~~The defendant must file an answer within 30 days of the date of mailing, or within 30 days of the receipt of service completed by the sheriff (or another person authorized to serve process). The court clerk will mail a copy of the answer filed 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, as specified in a current schedule published by the Court Administrator, must be paid.~~

(1) The defendant must file an answer with the court clerk within 30 days of the date of mailing by the plaintiff, or within 30 days of the receipt of service completed by the sheriff, or another person authorized to serve process, with a copy to the plaintiff.

(2) 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 defendant must pay the required filing fee as specified in a current schedule published by the Court Administrator.

(e) Default by Defendant. ~~If, after service is completed, 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 signed personally by the plaintiff or a person with personal knowledge of the facts in the affidavit, within 30 days from the date of the court clerk's notice. In cases based on a credit card debt, the motion for default shall include a copy of the contract or other documentary evidence of the original debt, which must contain a signature of the defendant. If no such signed writing evidencing the original debt ever existed, then a copy of the last statement generated when the credit card was actually used for purchase or other competent evidence of the existence of the debt must be submitted. The motion must also contain copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain at least the last four digits of the original account number of the debt purchased or other identifying information uniquely associated with the account and must clearly show the debtor's name associated with that account number. 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.~~

(1) If, after service is completed, a defendant fails to file a timely answer with the court clerk, the plaintiff may file, within 60 days of the date by which the defendant was required to answer, a motion for default judgment. The motion must be on a form obtained from the Judiciary website or at the clerk's office and must be accompanied by an affidavit signed personally by the plaintiff or a person with personal knowledge of the facts in the affidavit. The plaintiff must mail a copy of the motion and affidavit to the defendant's last known address and file with the clerk the applicable certificate of service, which is available on the Judiciary website and at the clerk's office.

(2) In cases based on a credit card debt, the motion for default must include a copy of

(A) the contract or other documentary evidence of the original debt, which must contain a signature of the defendant, or, if no such signed writing evidencing the original debt ever existed, then a copy of the last statement generated when the credit card was actually used for purchase or other competent evidence of the existence of the debt; and

(B) the assignment or other writing establishing that the plaintiff is the owner of the debt.

(3) If a credit card debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain at least the last four digits of the original account number of the debt purchased or other identifying information uniquely associated with the account and must show the debtor's name associated with that account number.

(4) The judge 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. If the plaintiff plans to collect on the judgment, the plaintiff must:~~

(1) serve a default judgment on a defendant by first class mail and file with the clerk the applicable certificate of service, which is available on the Judiciary website and at the clerk's office; or,

(2) if the mailing to the defendant is returned because it was undeliverable, have the default judgment served on the defendant by a sheriff (or other person authorized to serve process) with the plaintiff initially paying the costs of service. The judge may find the defendant liable for any costs of service incurred by the plaintiff.

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Reporter's Notes—2015 Amendment

Rule 3 is amended as part of the Supreme Court's effort to obtain cost savings in the operations of the clerk's offices in all courts by saving mailing costs and clerk time. The amended rule is also set forth in a simpler format for greater clarity and accessibility, with no changes in practice except as described below. Fillable forms referred to in this and other rules are available on the Judiciary website or may be obtained in the clerk's office.

Rule 3(a)(1) makes clear that, when filing a complaint to begin a small claims action, the plaintiff must pay the filing fee required by 32 V.S.A. § 1431(c)(1) and specified in the court's fee schedule. The plaintiff must also provide a stamped, self-addressed envelope with sufficient postage for the purpose of returning the signed summons, file-stamped complaint, and any attachments to the plaintiff.

Amended Rule 3(b) eliminates the provision of the former rule under which the clerk would serve the summons and complaint on the defendant by mail and notify the plaintiff if the defendant did not answer within the required time. Service now becomes the plaintiff's responsibility. Rule 3(b)(1) requires the plaintiff initially to make service by first class mail within seven days after receiving the signed summons from the clerk. The plaintiff must send the clerk a certificate of service so that the court knows that service has occurred. If the defendant does not reply to mailed service within 30 days, Rule 3(b)(2)(A) provides that the plaintiff must resort to in-hand service made by a sheriff or another authorized person, which includes deputy sheriffs, constables, others specifically authorized by statute, and persons specially appointed by the court. See V.R.C.P. 4(c) and Reporter's Notes. The plaintiff is responsible for learning of this need by noting the failure to receive from the defendant a copy of the filed answer sent as required by Rule 3(d)(1). Under Rule 3(b)(2)(B), if a defendant who is subject to jurisdiction in Vermont resides out of state and has not responded to mailed service under Rule 3(b)(1), the plaintiff must have personal service made by a method provided in V.R.C.P. 4(e).

When the summons and complaint have been served in hand, Rule 3(b)(2)(C) requires the plaintiff to file the officer's or other server's return of service with the clerk within 60 days of the mailing of the summons and complaint unless the court extends the time on written request. The former rule provided 30 days for return of in-hand service that had been made following the clerk's notice to the plaintiff of the defendant's failure to answer a summons within 30 days after the clerk's mailing of it. The plaintiff must initially bear the cost of service under either Rule 3(b)(2)(A) or (B), but Rule 3(b)(2)(D) gives the court discretion to require the defendant to pay those costs. With the elimination of the clerk's responsibilities for those mailings, the date of mailing the summons and complaint set forth in the certificate of service filed by the plaintiff is the date from which the 60-day period will be calculated. Rule 3(b)(2)(E) permits the court to dismiss the claim if the return is not filed within 60 days or by a later time allowed by the court.

Under amended Rule 3(d), the clerk is no longer required to mail the defendant's answer to the plaintiff. The defendant is responsible for sending a copy to the plaintiff, who, as noted above, will learn of the

need to make service in hand if an answer to mailed service is not filed within 30 days.

Amended Rule 3(e)(1) similarly relieves the clerk of the duty to notify the plaintiff of the defendant's failure to answer as a basis for filing a motion for default. The plaintiff is responsible for noticing that the answer has not been filed within the allotted time. The plaintiff must mail a copy of the default motion and affidavit to the defendant and file a copy of the certificate of service with the clerk. Rule 3(e)(3) eliminates "clearly" from the former rule as an unnecessary intensification of the requirement that evidence of successive assignments of the debt show the name of the debtor on the original debt. The time limit for filing a motion for default judgment, formerly 30 days, is now extended to 60 days.

Amended Rule 3(f) requires a plaintiff who wishes to pursue collection to serve the default judgment on the defendant by mail and file a certificate of service with the clerk. If the mailing to the defendant is returned, the plaintiff must arrange for service by the sheriff or other process server. As under Rule 3(b)(2)(D), the judge may require the defendant ultimately to pay service costs.

3. That Rule 7 of the Vermont Rules of Small Claims Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

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 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.~~

(1) A party who has recovered a judgment in a small claims action (the "judgment creditor") may file a motion for a financial disclosure hearing on a form obtained from the Judiciary website or at the clerk's office, with a copy to the party against whom the judgment was awarded (the "judgment debtor"), if

(A) the judgment was awarded as a lump sum and remains unpaid for 30 days after the entry of judgment, or

(B) an installment on the judgment is overdue for 30 days or longer.

(2) The judgment creditor must pay the required fee for filing a motion, as specified in a current schedule published by the Court Administrator.

(3) The judgment creditor must file a certificate of service with the clerk showing that the judgment debtor was served with the motion.

(4) The judgment creditor may not file a motion for a financial disclosure hearing more often than once in three months.

(b) ~~Notice of hearing; sService 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.

(1) Upon receiving a motion for a financial disclosure hearing, the court clerk will set a date and time for hearing and will send a notice of hearing to the judgment debtor advising the debtor to appear at the hearing to disclose his or her ability to pay the overdue judgment or installment and to bring with him or her a completed financial statement on the form supplied with the notice of hearing.

(2) The clerk will serve on the judgment debtor and all other parties the notice of hearing, the list of exemptions appearing in Form 34 of the Vermont Rules of Civil Procedure, and the financial disclosure affidavit.

(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.~~

(1) If, after hearing, the judge makes written findings, based on the evidence presented, 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 judge will order the judgment debtor to make such payments as are deemed appropriate.

(2) If the judgment debtor fails to appear or fully disclose at the hearing, the judge will order full payment at once.

(3) In his or her discretion, the judge 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

serve the order by mailing a copy of the order to the judgment debtor by first-class mail and file the applicable certificate of service, which is available on the Judiciary website and at the clerk's office, with the court clerk, before any motion for contempt is filed under Rule 8.

Reporter's Notes—2015 Amendment

Rule 7 is amended consistent with the simultaneous amendments of Rule 3 designed to save costs in the operation of the clerks' offices and to simplify the format of the affected Small Claims Rules. See Reporter's Notes to the amendments of Rule 3. Amended Rule 7(a) is set forth in clearer format. Paragraph (a)(1) makes clear that the judgment creditor is to serve a copy of a motion for financial disclosure on the judgment debtor. Under amended Rule 7(b), the clerk will send the notice of hearing to the debtor and all other parties with the list of exemptions currently found in V.R.C.P. Form 34 and the financial disclosure affidavit. Amended Rule 7(c) is set forth in clearer format. Rule 7(d) is amended to specify that the judgment creditor must send a copy of any disclosure order to the judgment debtor and must file a certificate of service with the clerk.

4. That Rule 10 of the Vermont Rules of Small Claims Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

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 filing fee, as specified in a current schedule published by the Court Administrator, must be paid. Upon the filing of the notice of appeal, the clerk shall serve a copy of the notice upon each party to the small claims case.~~

(1) Any party to a small claims action may appeal the judgment to the civil division by filing a notice of appeal with the civil division clerk within 30 days from the entry of the judgment, using a form obtained from the Judiciary website or at the clerk's office.

(2) The notice of appeal may, but need not, contain a statement of the basis of the appeal.

(3) The appealing party must pay the required filing fee, as specified in a current schedule published by the Court Administrator.

(4) At the time of filing the notice of appeal, the appealing party must serve a copy of the notice upon all other parties to the small claims action, and must file a

certificate of service with the court clerk.

(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. The judgment appealed from is stayed and will not be enforced during the 30 days allowed by subdivision (a) for filing a notice of appeal and, if a notice of appeal is filed, until the decision of the appeal.~~

(c) Record on appeal; transcript. ~~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.~~

(1) The appeal will be heard on the record of the proceedings in the small claims action, consisting 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.

(2) If a transcript is needed, the appealing party must order it from a Court-approved transcription service on a form obtained from the Judiciary website or at the clerk's office, with a deposit of the estimated cost within 15 days after filing the notice of appeal. The appealing party must file the completed original transcript with the superior 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~~ Appeal to the Supreme Court by permission. ~~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.~~

(1) There is no absolute right to appeal to the Vermont Supreme Court from a decision rendered in an appeal to the civil division.

(2) Permission to appeal to the Vermont Supreme Court may be requested as provided in Rule 6(b) of the Vermont Rules of Appellate Procedure. The request for permission must be filed with the clerk of the civil division within 10 days from the entry of the judgment to be appealed from and must be served on all other parties by the party

seeking permission. The party seeking permission must file the applicable certificate of service, which is available on the Judiciary website and at the clerk's office, with the clerk.

(3) If the request for permission to appeal is not filed with the clerk of the civil division within 10 days from the entry of judgment, or permission to appeal is denied by the Vermont Supreme Court, the clerk will notify all parties that the appellate decision of the civil division is final.

(4) If permission to appeal is granted by the Vermont Supreme Court, further proceedings are governed by the Vermont Rules of Appellate Procedure.

Reporter's Notes—2015 Amendment

Rule 10 is amended consistent with the simultaneous amendments of Rule 3 designed to save costs in the operation of the clerks' offices and to simplify the format of the affected Small Claims Rules. See Reporter's Notes to the amendments of Rule 3. Rule 10(a)(1), like the amendments to Rule 3, encourages parties to obtain forms from the Judiciary website or directly from the clerk's office to make clear that it is not the responsibility of the clerk to send forms to the parties. The remainder of Rule 10(a) and the other provisions of the rule are designed both to state provisions in clearer form and to make clear that the parties, rather than the clerks, have the burden of providing necessary notice and service.

5. That Rule 12 of the Vermont Rules of Small Claims Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

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~~ receiving satisfaction, and the court clerk will enter satisfaction of the judgment on the docket. If ~~notification of~~ satisfaction of the judgment is not entered on the docket within 20 days after ~~receipt of~~ the judgment creditor receives 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~~ judgment debtor of a notice of the motion, files a written objection with the court clerk, with a copy to the judgment debtor, the court will order an entry on the docket of satisfaction of the judgment. The judgment debtor and the judgment creditor must file with the clerk an applicable certificate of service, which is available on the Judiciary website and at the clerk's office.

Reporter's Notes—2015 Amendment

Rule 12 is amended consistent with the simultaneous

amendments of Rule 3 designed to save costs in the operation of the clerks' offices and to simplify the format of the affected Small Claims Rules. See Reporter's Notes to the amendments of Rule 3. The rule is generally amended for greater clarity of expression. It is specifically amended to provide that the judgment debtor, rather than the clerk, must mail notice to the judgment creditor of a motion that a judgment be deemed satisfied, and that a judgment creditor objecting to that motion must send a copy of the objection to the judgment debtor.

6. That the Court finds that these emergency amendments must be promulgated without resort to the notice and comment procedures set forth in Administrative Order No. 11, because the cost savings that the amendments will produce must be implemented as soon as possible to enable the Judicial Branch to meet the budget reduction targets set by the Legislature for FY 15 and anticipated for FY 16.

7. The Court Administrator is directed to send these rule amendments out for comment pursuant to Administrative Order 11, with comments to be made, within 60 days, to the Advisory Committee on the Rules of Civil Procedure. The Advisory Committee is directed to review any comments received and advise the Court whether the amendments should be revised or made permanent.

8. That these rules as amended are prescribed and promulgated effective May 4, 2015. The Reporter's Notes are advisory.

9. That the Chief Justice is authorized to report this amendment to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 28th day of April, 2015.

/s/

Paul L. Reiber, Chief Justice

/s/

John A. Dooley, Associate Justice

/s/

Marilyn S. Skoglund, Associate Justice

/s/

Beth Robinson, Associate Justice

/s/

Harold E. Eaton, Jr., Associate Justice