

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

**Order Promulgating Amendments to the Vermont Rules of Civil Procedure and 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 Rule 9.1 of the Vermont Rules of Civil Procedure be added to read as follows:

RULE 9.1. COMPLAINT IN AN ACTION ON A CREDIT CARD DEBT

Any complaint based on a credit card debt shall contain additional information necessary to provide the court with sufficient information regarding standing and the statute of limitations. At a minimum, the complaint must include the following, unless otherwise ordered by the court:

- (a) The name of the original creditor, as well as the name of the current owner of the debt, if different.
- (b) The last four digits of the original account number or other identifying information uniquely associated with the account.
- (c) The date of last payment by the accountholder and the amount due at that time.
- (d) The date the plaintiff claims the defendant defaulted and the basis for that default.
- (e) The total amount currently due on the debt, with any amount of interest claimed post-default separately identified.
- (f) The date and parties to the contract or other source of the original debt.
- (g) If the debt was assigned, the date and parties to the assignment. If the debt has been assigned more than once, then the date and parties to each assignment must be identified to establish an unbroken chain of ownership. The complaint must allege that each assignment or other writing evidencing transfer of ownership contains 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 shows the debtor's name associated with that account number.

Reporter's Notes

V.R.C.P. 9.1 is added to incorporate in the civil rules the pleading requirements for an action on a credit card debt added to the Vermont Rules of Small Claims Procedure by the addition of V.R.S.C.P. 3(h) in a 2013 amendment and a simultaneous 2015 clarifying amendment to V.R.S.C.P. 3(h)(7). By simultaneous amendment, V.R.C.P. 55(b)(7) is added to incorporate the provisions of the 2013 amendment of V.R.S.C.P. 3(e) and a simultaneous 2015 clarifying amendment covering the requirements for a motion for default in a credit card debt action.

New V.R.C.P. 9.1 requires that the complaint in a civil action on a credit card debt must plead the details of the original transaction and subsequent assignments of the debt. New V.R.C.P. 55(b)(7) requires that a motion for default judgment in a credit card action must be accompanied by documentary evidence of the matters required to be pleaded. See Reporter's Notes, V.R.C.P. 55. These new rules adopt virtually verbatim the 2013 amendment of V.R.S.C.P. 3(e) and addition of V.R.S.C.P. 3(h) and their 2015 amendments. These rules were based on rules and statutes in other states, including North Carolina, Delaware, and New York. The new rules require the plaintiff creditor to establish the existence of the debt and ownership of it--or at least that the plaintiff is acting as an agent of one who can establish ownership.

The new rules are necessary because many credit card collection actions are brought in the Superior Court, Civil Division, as civil, rather than small claims, actions. The amendments reflect best practices followed by many plaintiffs' attorneys in such civil actions, but some do not follow the pleading and motion practice provided for small claims actions. As a result, defendants must expend significant resources and time on lengthy and difficult discovery to obtain the information and documents that V.R.S.C.P. 3(h) and (e) require to be pleaded and attached to a motion for default judgment in a small claims action. The rules will harmonize practice in small claims and civil actions and avoid the need for discovery with regard to basic items related to a credit card collection claim.

2. That Rule 55(b)(7) of the Vermont Rules of Civil Procedure be added to read as follows (new matter underlined):

RULE 55. DEFAULT

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) Judgment. Judgment by default may be entered as follows:

(1) *Application; Affidavit.* The party entitled to a judgment by default shall apply to the court therefor. No judgment by default shall be entered against a party who has not appeared in the action until the filing of an affidavit made on personal knowledge and setting forth facts as to liability and damages. No judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian, conservator, or other such representative who has appeared therein.

(2) *By the Clerk When Claim is Is for a Sum Certain and Defendant Has Not Appeared.* If the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk, upon order of the Presiding Judge issued without notice or hearing and upon affidavit of the amount due, shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person.

(3) *By the Court When Defendant Has Not Appeared and Claim Not for a Sum Certain, or By by the Court for Other Reasons.* If the defendant has not appeared in the action and the claim is not for a sum certain, or if it is otherwise necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

(4) *By the Court When the Defendant Has Appeared.* If the party against whom judgment by default is sought has appeared in the action judgment may be entered after hearing, upon at least 3 days' written notice served by the clerk.

(5) *Affidavit Required.* Notwithstanding the foregoing, no judgment by default shall be entered until the filing of an affidavit as required by section 201(b)(1) of the Servicemembers Civil Relief Act, 50 U.S.C. App. 521, stating whether or not the defendant is in military service and showing necessary facts to support the affidavit or, if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. If it appears that the defendant is in military service, the court shall take appropriate action as provided in that Act.

(6) *Failure to Appear at Trial.* In those cases in which a defendant has appeared in the action but has failed to appear at a duly noticed trial on the merits, the plaintiff may either move for default or proceed to trial. If plaintiff obtains judgment based on evidence submitted at trial, that judgment shall be deemed a default judgment solely for the purposes of Rule 55(c), Rule 62(b) and Vermont Rule of Appellate Procedure 4.

(7) *Credit Card Debt.* In actions 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 included. The motion must also contain a 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 show the debtor's name associated with that account number.

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Reporter's Notes—2015 Amendment

V.R.C.P. 55(b)(7) is added to incorporate in the civil rules the provisions of V.R.S.C.P. 3(e) as amended in 2013 and in a simultaneous 2015 amendment to cover the requirements for a motion for default in an action on a credit card debt. By simultaneous amendment, V.R.C.P. 9.1 is added to incorporate the pleading requirements for such actions added to the Vermont Rules of Small Claims Procedure by the addition of V.R.S.C.P. 3(h) in a 2013 amendment and a simultaneous 2015 amendment.

New V.R.C.P. 55(b)(7) requires that a motion for default in a credit card action must be accompanied by signed evidence of the debt or, in the absence of such documentation, a credit card statement showing the debt, “or other competent evidence” of it. In addition, the motion must be supported with copies of the assignment and any subsequent assignments, linked to the defendant, and showing that the present plaintiff is the owner of the debt. These documents are being required because they are often helpful, or even necessary, to assist the court in determining that the plaintiff has a solid claim. New V.R.C.P. 9.1 requires that the complaint in such an action must plead similar specific details of the original transaction and subsequent assignments.

The new rules are necessary because many credit card collection actions are brought in the Superior Court, Civil Division, as civil, rather than small claims, actions. Plaintiffs' attorneys in such civil actions do not always follow the pleading and motion practice provided for small claims actions. As a result, defendants must expend significant resources and time on lengthy and difficult discovery to obtain the information and documents that V.R.S.C.P. 3(h) and (e) require to be pleaded and attached to a motion for default judgment in a small claims action. The rules will harmonize practice in small claims and civil actions and avoid the need for discovery with regard to basic items related to a credit card collection claim.

3. That Rule 3(h)(7) 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

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(h) Credit Card Debt Collection Actions. Any complaint based on a credit card debt shall contain additional information necessary to provide the court with sufficient information regarding standing and the statute of limitations. At a minimum, the complaint must include the following, unless otherwise ordered by the court:-

* * * * *

(7) If the debt was assigned, the date and parties to the assignment. If the debt has been assigned more than once, then the date and parties to each assignment must be identified to establish an unbroken chain of ownership. The complaint must allege that each assignment or other writing evidencing transfer of ownership (A) contains 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 (B) ~~must clearly show~~ the debtor's name associated with that account number.

Reporter's Notes—2015 Amendment

Rule 3(h)(7) is amended to clarify the requirement adopted in 2013 that the complaint in a credit card debt collection action "allege" that each assignment of the debt show the name of the debtor on the original debt.

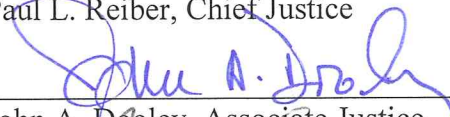
4. That these rules, as amended or added, are prescribed and promulgated effective September 1, 2015. The Reporter's Notes are advisory.

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

Dated in Chambers at Montpelier, Vermont, this 1st day of July, 2015.




Paul L. Reiber, Chief Justice



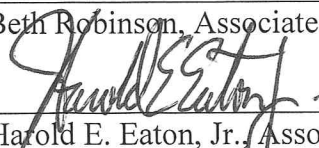
John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Beth Robinson, Associate Justice



Harold E. Eaton, Jr., Associate Justice