

**STATE OF VERMONT
VERMONT SUPREME COURT
APRIL TERM, 2022**

Order Promulgating Amendments to Rules 7 and 8 of the Vermont Rules of Small Claims Procedure

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

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

RULE 7. FINANCIAL DISCLOSURE HEARING

(a) Availability.

(1) A party who has been awarded ~~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 has been personally served on the debtor or an acceptance of service has been filed, and it has been at least a year since the court has determined (at the time of judgment or at a later hearing) that the debtor has an inability to pay, unless the creditor presents good cause to waive the twelve-month limit, such as evidence that the debtor has experienced a material change in financial circumstances, and the judgment was awarded as a lump sum and remains unpaid for 30 days after the service of the judgment on the judgment debtor, 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.

(b) Notice of hearing; service.

(1) Upon receiving a motion for a financial disclosure hearing, the court clerk will set a date and time for hearing. If the debtor has given the court a mailing address within the last year, the clerk 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. both parties, including the exemption form and a form for the debtor to list assets and liabilities. The clerk shall advise the debtor to fill in the forms and bring them to the hearing, or to appear by telephone or video and submit the forms to the court and creditor at least three days in advance. If the debtor has not provided the court with a mailing address within the last year, the clerk will provide notice to the creditor that the creditor must have the motion, hearing notice, exemption form, and assets/liabilities form served by sheriff or constable upon the debtor at least 14 days before the hearing.

(2) The clerk will serve on the ~~judgment~~ debtor and all other parties the notice of hearing, the list of exemptions appearing in the form approved by the Court Administrator and available on the Judiciary website Form 34 of the Vermont Rules of Civil Procedure, and the financial disclosure affidavit.

(c) Hearing and order.

(1) If, after hearing, the judge makes written findings, based on the evidence presented, that (A) the judgment has been unpaid for 30 or more days since the debtor's receipt of a judgment for full payment, service or that an installment has been overdue for 30 or more days since the debtor's receipt of the installment judgment, and (B) that the judgment debtor has not shown the right to any exemption on the exemption form, and (C) the 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, and the judge cannot determine from testimony or the forms submitted by the debtor what the debtor can afford to pay, the judge may continue the hearing or, if the judgment was an installment order, may 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 the hearing results in an order to pay, and 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 a sheriff or constable serve the order on the debtor and file a return of service 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 filing any further motions for contempt is filed under Rule 8 to collect upon the judgment.~~

Reporter's Notes—2022 Amendments

V.R.S.C.P. 7 is amended to address issues that have been plaguing the small claims docket. The amendments require personal service of judgments before financial disclosure hearings can be held and extend the time period between new financial disclosure hearings. The amendments also include some simple language changes to make the rules clearer. Simultaneously adopted amendments of V.R.S.C.P. 8 modernize and simplify the contempt process for failure to appear at a disclosure hearing. See Reporter's Notes to those amendments.

2. That Rule 8 of the Vermont Rules of Small Claims Procedure be amended to read as follows (new matter underlined, deleted matter struck through):

RULE 8. CIVIL CONTEMPT

(a) **Availability.** If a ~~judgment~~ debtor fails to appear for a financial disclosure hearing and the court does not issue a payment order, the court may schedule a contempt hearing based upon the failure to appear. ~~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 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.**

(1) ~~Upon receiving such a motion, the~~ The court clerk will set a date for hearing and provide a judicial summons to the ~~judgment~~ creditor requiring the ~~judgment~~ debtor to appear and present evidence showing why ~~he or she~~ the debtor should not be held in contempt of court for failing to appear at the previous hearing. The summons shall permit appearance by video or telephone. The judicial summons will include notice to the ~~judgment~~ debtor that ~~he or she~~ the debtor may be represented by ~~legal counsel~~ a lawyer at the hearing.

(2) Within seven days after receipt of the summons, the ~~judgment~~ creditor must send the summons, the list of exemptions appearing in the forms approved by the Court Administrator and available on the Judiciary website, and the financial disclosure affidavit to a sheriff (or other person authorized to serve process) for service on the ~~judgment~~ debtor 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 before the hearing or at the start no later than the beginning of the hearing.

(c) **Hearing.** If the ~~judgment~~ debtor fails to appear at the hearing after receiving personal service of the summons, ~~on the motion for civil contempt~~, the court may hold the ~~judgment~~ debtor in contempt based upon that failure to appear. The penalties for contempt shall be limited to (1) authorizing the creditor to obtain a credit report on the debtor, or (2) adding a financial penalty to the judgment, in addition to the filing and service fees incurred for the motion. If the ~~judgment~~ debtor does appear at the hearing, the court shall proceed with a financial disclosure hearing pursuant to Rule 7 ~~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.~~

Reporter's Notes—2022 Amendments

V.R.S.C.P. 8 is amended simultaneously with amendments to V.R.S.C.P. 7 to address issues that have been plaguing the small claims docket. See Reporter's Notes to simultaneous amendment of V.R.S.C.P. 7. The amendments clarify the basis for a contempt finding and narrow the remedies available for contempt. They also simplify the process for creditors seeking a contempt order because the current process is drawn out and inefficient.

3. That these amendments be prescribed and promulgated, effective on June 20, 2022.
The Reporter's Notes are advisory.

4. 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 18th day of April, 2022.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice