

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2020

Order Promulgating Amendments to Rules 9.1 and 55(c)(7) of the Vermont Rules of Civil Procedure and Rules 2(a), 3, and 8(c) 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 9.1 of the Vermont Rules of Civil Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

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

Any complaint based on a credit card debt ~~shall~~, or containing a claim brought by a debt-buyer rather than by the original creditor, must be verified as provided in subdivision (h) and must 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 or debt.
- (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.
- (h) The verified complaint required by subdivision (a) must be on a form approved by the Court Administrator.

Reporter's Notes—2020 Amendment

V.R.C.P. 9.1 is amended to implement the recommendation of the Civil Division Oversight Committee that the procedure for

credit card debt collection actions and other actions brought by a debt-buyer rather than the original creditor be eliminated from the Vermont Rules of Small Claims Procedure and provided only in the Rules of Civil Procedure. Simultaneous amendments to V.R.C.P. 55(c)(7) and V.R.S.C.P. 2 and 3 are being adopted to accomplish this purpose.

The idea of small claims court is to allow uncomplicated matters involving small dollar amounts to be litigated simply and quickly without the need for legal counsel. In recent years, credit card collection cases have taken over a large portion of the small claims docket. See, e.g., <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts>.

All of these cases are filed by lawyers, primarily in firms that specialize in such cases on a regional or national basis. These cases are often brought by debt-buyers, rather than the original creditor, and involve chains of assignments and confusing records. Such issues can raise complicated legal questions far outside the bounds of simple small claims matters that are easy to handle without a lawyer.

There has also been great inconsistency in how these cases have been handled by the lawyers serving as Acting Judges in small claims cases. Moreover, as the superior court transfers over to the new case management system, it is expected that it will be more challenging to use lawyers as Acting Judges. As a practical matter, this change will not have a major impact on civil court hearing time because so much of this docket is done by motion.

Rule 9.1(h), requiring that the complaint be verified, is added to provide further protection against abuse of defendants who are often self-represented in such actions.

The Small Claims Rules were adopted by the Supreme Court pursuant to its general administrative authority under 4 V.S.A. §§ 1 and the grant of power to it under 12 V.S.A. § 1 (implementing Vt. Const., Ch. II, sec. 37) to make “general rules with respect to pleadings, practice, evidence, procedure, and forms for all actions and proceedings in all courts of this State,” so long as they do not “abridge, enlarge, or modify any substantive rights of any person provided by law.” By statute, the Civil Division of the Superior Court has “original and exclusive jurisdiction of all original civil actions,” as well as “jurisdiction to hear and dispose of any other matter brought before the court pursuant to law that is not subject to the jurisdiction of another division.” 4 V.S.A. § 31(1), (5).

Those jurisdictional statutes make no express provision for small claims cases, which are thus within the jurisdiction of the Civil Division. See V.R.S.C.P. 1(a). The Supreme Court is expressly empowered by 12 V.S.A. ch. 187, § 5531, to use its 12 V.S.A. § 1 rule-making power to make procedural rules for small claims actions other than those for defamation or exceeding \$5,000 in controversy and subject to other provisions of ch. 187, §§ 5532-5541. See Reporter’s Notes to 2010 Emergency Amendment of V.R.S.C.P. 1. The present amendments of V.R.S.C.P. 2, 3, and 8 are made pursuant to that power and to the general administrative authority of the Supreme Court as outlined above.

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

RULE 55. DEFAULT

(c) Judgment.

* * * * *

(7) *Credit Card Debt.* In actions based on a credit card debt, or brought by a debt-buyer rather than by the original creditor, a plaintiff’s motion for default judgment 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.

Reporter’s Notes—2020 Amendment

Rule 55(c)(7) is amended for consistency with the simultaneous amendments of V.R.C.P. 9.1 and V.R.S.C.P. 2(a) and 3 that eliminate the procedure for credit card debt and other debt buyer actions from the Small Claims Rules and provide it only in V.R.C.P. 9.1. See Reporter’s Notes to the simultaneous amendment of that rule.

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

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 and claims to collect credit card debt or claims brought by a debt-buyer rather than the original creditor. 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.

Reporter's Notes—2020 Amendment

V.R.S.C.P. 2(a) is amended for consistency with the simultaneous amendments of V.R.C.P. 9.1 and V.R.S.C.P. 3 that eliminate the procedure for credit card debt and other debt buyer actions from the Small Claims Rules and provide it only in V.R.C.P. 9.1. See Reporter's Notes to the simultaneous amendment of that rule.

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

RULE 3. PLEADINGS; SERVICE OF PLEADINGS

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(e) **Default by Defendant.**

(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.

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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:~~

~~(1) The name of the original creditor, as well as the name of the current owner of the debt, if different.~~

~~(2) The last four digits of the original account number or other identifying information uniquely associated with the account.~~

~~(3) The date of last payment by the accountholder and the amount due at that time.~~

~~(4) The date the plaintiff claims the defendant defaulted and the basis for that default.~~

~~(5) The total amount currently due on the debt, with any amount of interest claimed post-default separately identified.~~

~~(6) The date and parties to the contract or other source of the original debt.~~

~~(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) shows the debtor's name associated with that account number.~~

Reporter's Notes—2020 Amendment

V.R.S.C.P. 3(e) is amended for consistency with the simultaneous amendments of V.R.C.P. 9.1 and V.R.S.C.P. 2 that eliminate the procedure for credit card debt and other debt buyer actions from the Small Claims Rules and provide it only in V.R.C.P. 9.1. Former 3(e)(2) and (3) are deleted and (e)(4) is now (e)(2). Rule 3(h) is deleted as unnecessary. See Reporter's Notes to the simultaneous amendment of V.R.C.P. 9.1.

5. That Rule 8(c) of the Vermont Rules of Small Claims Procedure be amended to read as follows (new matter underlined):

RULE 8. CIVIL CONTEMPT

(c) **Hearing.**

(1) If the judgment debtor fails to appear at the hearing on the motion for civil contempt, the court may hold the judgment debtor in contempt for failure to appear.

(2) 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. A finding of contempt under this paragraph may be based only upon evidence that the debtor has the ability to pay but is willfully failing to do so.

(3) The remedies for contempt under this subdivision (c) shall be limited to financial penalties or orders to allow access to credit reports. No arrest warrants shall be issued in small claims proceedings.

Reporter's Notes—2020 Amendment

Rule 8(c) is amended to eliminate the possibility of arrest in small claims proceedings, in keeping with the goal of avoiding the imposition of such severe sanctions for failure to pay debts. See, e.g., <https://www.aclu.org/report/pound-flesh-criminalization-private-debt>.

6. That these rules, as amended, are prescribed and promulgated effective _____, 2020. The Reporter's Notes are advisory.

7. 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 ____ day of _____, 2020.

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice