

STATE OF VERMONT  
VERMONT SUPREME COURT  
\_\_\_\_\_TERM, 2019

**Order Amending Rules 3, 7, 9, 10 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 3(f) and (g) 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**

(f) **Service of default judgment.** ~~If the plaintiff plans to~~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. The plaintiff must file the sheriff's proof of service with the court before a financial disclosure hearing or any other enforcement of the judgment may be requested.~~

(g) **Reopening a default judgment.**

(1) A party against whom a default judgment has been entered (the "judgment debtor") may move to reopen the judgment.

(A) The judgment debtor must file the motion in writing with the court clerk no later than the time of the first financial disclosure hearing relating to the judgment.

(B) If no motion for a financial disclosure hearing has been filed, the court may not reopen the judgment unless (i) the motion is filed in writing with the court clerk no later than 90 days after ~~entry~~ service of the judgment on the defendant, or (ii) the court finds that the judgment debtor did not receive timely notice of the entry of the judgment.

(C) The judgment debtor must pay the required fee for filing a motion, as specified in a current schedule published by the Court Administrator, and file a certificate of service.

(2) A default judgment will not be reopened unless good cause is shown.

### **Reporter's Notes—2020 Amendment**

Rule 3 is amended, along with simultaneous amendments to Rules 7, 9, and 10, at the request of the Civil Division Oversight Committee to address the problem that currently there is no requirement that the plaintiff serve the defendant with a small claims default judgment.

Under the existing rules, because it is a default judgment the court has no good address for the defendant and therefore only sends a copy of the judgment to the plaintiff. However, Rule 7(a) provides for payment within 30 days of “entry of judgment,” meaning the date that the judgment is docketed. If no such payment is made, plaintiff may file a motion for financial disclosure, and there is no requirement in Rule 7(a) that the plaintiff prove that the defendant has received or seen the judgment. The plaintiff is only required to file a certificate of service showing that the motion was sent to the defendant by regular mail. The plaintiff may also seek trustee process or a writ of execution, or may file a judgment lien, before the defendant knows of the judgment. V.R.S.C.P. 9. It is not until the next enforcement step (a motion for contempt for not complying with whatever order comes out of the financial disclosure hearing) that the plaintiff is required to have the sheriff personally serve the defendant. Even then, the judgment itself is not served, only the judicial summons to come to the hearing. V.R.S.C.P. 8(b)(2). Rule 10(a) presents a similar problem with appeals.

Accordingly Rule 3(f) is amended to require service by sheriff or other authorized person and the filing of proof of service in every case before enforcement proceedings are taken. Rule 3(g) is amended to conform to the amendment of Rule 3(f).

2. 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.**

(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~~ 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.

(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; service.**

(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.**

(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 since service 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—2020 Amendment**

Rule 7(a)(1)(A) and (c) are amended to conform to the simultaneous amendment of Rule 3(f) requiring service of a default judgment on the defendant before enforcement proceedings are commenced. See Reporter's Notes to that amendment.

3. That Rule 9 of the Vermont Rules of Small Claims Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

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

(a) **Trustee process.** If a judgment is not paid within the 30 days period provided in Rule 10(a)(1) 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 judgment creditor must pay the required fee for filing a motion, as specified in a current schedule published by the Court Administrator.

(b) **Writ of execution.**

(1) If a judgment is not paid within the 30 days period provided in Rule 10(a)(1) and no appeal is pending, the judgment creditor may obtain a writ of execution by filing a written request accompanied by a writ of execution on a form obtained from the Judiciary website or at the clerk's office, on which the judgment creditor has included required information concerning the parties and the amount of the judgment recovered and any amount paid by the judgment debtor. The judgment creditor must pay the required fee for obtaining a writ of execution, as specified in a current schedule published by the Court Administrator.

(2) If appropriate, the clerk will provide the signed writ of execution to the judgment creditor. 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, which may be obtained from the Judiciary website or at the clerk's office. 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.

(c) **Judgment lien.** If a judgment is not paid within the 30 days period provided in Rule 10(a)(1) and no appeal is pending, the judgment creditor may obtain 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. If the judgment creditor is requesting that the certified copy be sent by mail, the judgment creditor must provide the

clerk with a self-addressed envelope with sufficient postage for mailing the certified copy.

### **Reporter's Notes—2020 Amendment**

Rule 9(a), (b)(1), and (c) are amended to incorporate the appropriate 30-day period provided in Rule 10(a)(1) as simultaneously amended. If the defendant has appeared, enforcement proceedings may be undertaken within 30 days from the entry of judgment. If the judgment is a default judgment, the date is 30 days from the date of service on the defendant. The latter provision is intended to conform to the simultaneous amendment of Rule 3(f), requiring service of a default judgment on the defendant before enforcement proceedings are commenced. See Reporter's Notes to that amendment.

4. That Rule 10(a) 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.**

(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. The notice must be filed within 30 days from the entry of the judgment, in cases in which the defendant appeared, and within 30 days from service of the judgment upon the defendant in cases in which the judgment was issued by default. ~~The notice must be on~~ 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. If the appealing party did not previously register to receive documents from the court by e-mail, that party may do so when filing the appeal by providing the registration information in the notice of appeal and the court will e-mail all documents to the party instead of sending them by mail.

(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.

### **Reporter's Notes—2020 Amendment**

Rule 10(a)(1) is amended to conform appellate practice to the simultaneous amendment of Rule 3(f) requiring service of a default judgment on the defendant before enforcement proceedings are commenced. See Reporter's Notes to that amendment.

5. That these rules as amended are prescribed and promulgated effective \_\_\_\_\_, 2020. The Reporter's Notes are advisory.

6 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.

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

\_\_\_\_\_  
Vacant, Associate Justice

PROPOSED