
INTELLECTUAL PROPERTY AND TRANSACTIONAL LAW CLINIC



SMALL CLAIMS, COURTS AND PROCEDURES

OVERVIEW

In Virginia each state District Court is required to have a small claims division. Small claims courts have jurisdiction over civil cases in which money or property damages are sought up to five thousand dollars (\$5,000). Small claims courts exist to determine the rights of litigants and dispense justice expeditiously.

Small claims proceedings are less formal than other civil court proceedings at the District and Circuit court level. The judge makes all decisions; there are no juries. All parties are represented by themselves, not attorneys. Evidence may be admitted at the judge's discretion beyond what is generally allowed by formal rules of practice, procedure, pleading or evidence. Witnesses must still swear to tell the truth. Privileged communications such as doctor/patient and the like will not be admissible.

A successful plaintiff will, in most cases receive a money judgment in their favor. The judgment is recognition by the court that the defendant owes the plaintiff the particular sum of money. The plaintiff must still enforce the judgment and there is no guarantee that the defendant will have property to satisfy it. Enforcement remedies are discussed below.

The applicable law governing small claims courts can be found in the Virginia Code Annotated, Title 16.1, Ch. 6: Article 1, Section 76; Article 2, Sections 77-78; Article 3, Sections 79- 118.11; Article 5, Sections 122.1-122.7.

PRIOR TO FILING SUIT

It is not mandatory in Virginia for a plaintiff to contact a potential defendant and try to settle the dispute before it becomes a lawsuit, however it is recommended. Business-like

correspondence in the form of a demand letter can work in your favor in several ways: 1) it shows the other party that you are serious and will pursue legal action which can encourage payment 2) should you have to sue, the letter serves as evidence of your willingness to try to settle the matter out of court.

FILING SUIT AND THE WARRANT IN DEBT

To commence an action in small claims court the plaintiff must file a civil warrant. This may be a warrant in debt or warrant in detinue. A warrant in debt¹ is a claim for money which must state a specific dollar amount claimed. A warrant in detinue² is a claim for specific personal property and must describe the property and state the basis for claim of possession.

The plaintiff may be able to file the lawsuit in any one of a number of different small claims courts. The preferred court is the district court in the city or county in which the defendant lives. Alternatively you may sue in the city or county in which the defendant works, or where the event giving rise to the debt occurred. You do this by filing the civil warrant with the clerk of the district court in that city or county.

After completing the civil warrant, the plaintiff will need to bring to the clerk the following: (1) the name of the defendant, (2) the current address of the defendant, (3) the amount of the plaintiff's claim, (4) the basis of the claim, and (5) sufficient funds to pay the filing fee and the sheriff's fee for serving the warrant.

The plaintiff must select a time for the hearing. Most district courts have a specific day or days of the week and times when small claims may be heard. Scheduling information is available from the clerk's office of each district court. The date for trial must be at least five days after service of process (discussed below). It is best not to rush the proceeding and to choose a date far enough in the future that will allow for service of process and case preparation.

SERVICE OF PROCESS

Service of process is the term for delivery of the civil warrant by the Sheriff's department or private process server to inform the defendant of the suit. The plaintiff cannot serve the defendant directly, but is welcome to mail a copy of the warrant to the defendant as a courtesy. It is important that service is done properly because a court cannot try the case without it.

¹ <http://www.courts.state.va.us/forms/district/dc402.pdf>

² <http://www.courts.state.va.us/forms/district/dc404.pdf>

Proper service to an individual is completed by delivery of the civil warrant to the defendant or to any member of the defendant's family over the age of sixteen at the defendant's home. If no one can be located for personal service, the process server may post the civil warrant to the entry door of the defendant's home.

LEGAL REPRESENTATION AND TRANSFER TO DISTRICT COURT

All parties in small claims court are represented by themselves. An attorney may appear on this or her own behalf, but not in a representative capacity. If the judge determines that a party is unable to understand or participate on their own behalf, a friend or relative may represent that party so long as they are not an attorney.

A defendant has the right to remove the case to the general district court at any point before a decision is made by the judge. If removed to the district court from the small claims division, the parties may be represented by an attorney.

RETURN OF THE WARRANT

Small claims are heard on particular days and times, and each jurisdiction has its own schedule. The date is chosen by the plaintiff when they civil warrant is filed. The civil warrant will include a specific date and time, chosen by the plaintiff, when the defendant and the plaintiff must come to court for the trial of their dispute. This is sometimes called the "return date."

All of the cases scheduled for trial on the same date may require the parties to appear at the same time. The cases will be called one at a time and the parties will approach the judge concerning their case.

TRIAL PROCEDURES

As previously mentioned, small claims courts are conducted in an informal manner. This means the judge has flexibility with courtroom procedures and evidentiary matters. However, the judge, court staff, opposing party, and proceedings must be given the same respect as any other courtroom appearance.

Each district court will operate differently. The district court clerk of court should have information explaining the procedures for that particular court ahead of time. If

information is unavailable in printed form, the clerk's office may answer particular questions about the procedures. The clerk cannot provide any legal advice.

Generally, the plaintiff and the defendant will both be given an opportunity to introduce evidence, ask questions of any witnesses, and explain why the judge should enter judgment in their favor. The plaintiff will go first and be given a limited amount of time to present their case. The defendant in turn will be given a limited amount of time to respond with their case. The plaintiff will then be given a final opportunity to respond to the defendant's case. The judge may ask questions at any time during the proceeding.

After the plaintiff and defendant have presented their case the judge will enter a judgment for the plaintiff or defendant. The judge is not required to explain their decision or issue a written opinion. Depending on the complexity of the case, the judge may or may not issue a decision on the day of the trial

DEFAULT JUDGMENT AND DISMISSAL

If proper service was completed on the defendant and the defendant fails to appear on the trial day, the judge may enter a "default judgment" in favor of the plaintiff provided the plaintiff can prove that the defendant owes the money or property. A default judgment means the defendant has lost the case.

If the plaintiff fails to appear in court, the defendant may ask the judge to decide the case in the defendant's favor.

ENFORCING THE JUDGMENT

The judgment of the court is an official recognition that the defendant, now the "judgment debtor," owes a certain amount of money or property to the plaintiff. Obtaining a judgment does not guarantee that the plaintiff will receive what is owed to them. The plaintiff must take additional steps to collect on the judgment. There are no criminal sanctions for failure to pay on a judgment.

There are several ways to enforce a judgment including: 1) obtain a writ of fieri facias (also known as a writ of execution) for the sheriff to seize the judgment debtor's personal property and sell it to satisfy the debt. This can be done no sooner than 21 days after the entry of the judgment. 2) Obtain a garnishment summons against the judgment debtor's bank account(s) or wages. 3) Record the judgment in the circuit court (also known as "docketing the judgment") in the county in which the judgment debtor's real property is and file a judgment lien against that property. 4) File a summons to answer interrogatories if information about the judgment debtor is needed to pursue the other options.

Authored by Kyle Martin, Fall 2010.