

# Virginia Judicial System Court Self-Help



Resources for Self-Represented Litigants in Virginia

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## Small Claims

### **Small Claims**

A small claims court has the power to hear civil cases in which a party (the plaintiff) is seeking a money amount up to \$5,000. This court also hears cases where the plaintiff is seeking return of personal property valued up to \$5,000. In Virginia, these cases are heard in the General District Court.

Trials in a small claims court are conducted in an informal manner. Each party must represent themselves. Witnesses are put under oath, and the judge can admit all relevant evidence without applying the formalities that apply to other courts. The purpose of trials in small claims court is for the court to be able to decide the rights of the parties fairly and quickly.

### **Preparing To File Suit**

#### Finding the Defendant's Correct Name and Address

Before filing suit, the plaintiff must know the defendant's current street address. If the defendant is an individual and the home street address cannot be found, a work street address may be good enough. A home address is better. If you only have the street address for place where the defendant works, the civil warrant *must* be served on the defendant in person, which can sometimes be hard to do.

Giving the court as complete a street address as possible will improve your chances of successful service of the papers on the defendant. Be sure to include the city or county and zip code for the location, and apartment number, if any. A post office box number is not enough for service.

#### Finding the Correct Name and Address if the Defendant is a Business

If the defendant is a business, it may be a corporation or partnership, or it may be trading under an assumed name.

### Business Trading Under an Assumed Name

Businesses trading under an assumed name by law must file something called a “fictitious name statement” in the clerk’s office of the local circuit court. You should check with the clerk’s office to see if such a statement has been filed. It will list the real name of the owner of the business, the name of an agent if the owner resides somewhere else, and an physical address where the owner or agent can be found. For example, if John Doe is doing business as “Doe Jewelry,” he would be sued under the name “John Doe trading as Doe Jewelry.”

### Suing a Corporation

A simple way to find the address for a corporation is to call the registered agent division of the State Corporation Commission in Richmond, (804) 371-9967. That office will provide the name and address of the corporation’s registered agent. The address needed to bring suit against the corporation is, for example, “XYZ Corp., c/o John Doe, Registered Agent 1402 Fish Lane, Fishtown, Virginia.”

## **Filing Suit In Small Claims Court**

If the plaintiff is seeking only a money judgment, the plaintiff should prepare and file a form called a “*warrant in debt*”. *Warrant in Debt Form & Warrant in Debt Instructions*

If the plaintiff is seeking to get back possession of specific personal property that the defendant wrongfully refuses to give back, the plaintiff should prepare and file a form called a “*warrant in detinue*”. *Warrant in Detinue Form & Warrant in Detinue Instructions*

The plaintiff will need to give the clerk of court the following:

- The name of the defendant;
- The current address of the defendant;
- For a money judgment case, the dollar amount of the plaintiff’s claim;
- For a suit to get back property, the specific property being sought, including its value;
- The reason for the claim, and;
- Funds to pay the filing fee and any sheriff’s fee for serving the warrant.

The amount one must pay to file a case and serve process may vary, depending upon the court. Ask the clerk of court about the cost. These fees must be paid in cash, by certified check, or by money order.

In addition to the copies you file with the court, you should make **two extra copies** of the papers you are filing. Keep one copy for your own records. Mail the second copy to the defendant.

Careful plaintiffs take one more step. Send a copy of the civil warrant by first-class mail to the defendant at least ten (10) days before the date when the plaintiff and defendant are to come to court for their first appearance in the dispute. Complete a Certificate of Mailing, deliver it to the judge on the court date or file it with the clerk's office before the date of the trial. If you do not take these steps, you cannot get judgment on the trial date if the defendant fails to come to court (which often happens), and the case will have to be continued until the ten-day notice requirement has been met.

## **Service of Process**

After filing, the papers are sent to the sheriff of the county or city where the defendant is located or the plaintiff may use a private process server to serve the papers on the defendant. A deputy of the sheriff's department or a private process server will deliver the civil warrant to the defendant. This is called "service of process" and it provides the defendant with notice of the suit.

## **How are Papers Served?**

Papers may be served in one of the following ways:

- Delivering the civil warrant to the defendant in person;
- Delivering the papers to the defendant or any member of the defendant's family age sixteen or older at his home or "usual place of abode;"
- By posting (attaching) the civil warrant to the front door of the defendant's usual place of abode.

If the deputy sheriff or private process server is not able to serve the papers by the above methods, the papers then will be returned to court with the deputy sheriff's or private process server's written statement that the defendant was "not found." This means that the sheriff or process server was unable to serve the papers and there is no good service. If there is no good service, the court cannot try the case. You will have to find a better address, or seek the advice of an attorney.

## **Trial or Return Date**

The civil warrant will include a date and time when the defendant and the plaintiff must come to court for the trial of their dispute. This date is sometimes called the "return date." In small claims court, the plaintiff should come to court prepared to try the case on this date. All of the cases scheduled for trial on the same date may require the parties to appear at the same time. However, the cases will be called one at a time when the parties will approach the judge concerning their case.

## What is a Default Judgment?

If the civil warrant was properly served on the defendant and he or she fails to appear on the return date, a “default judgment” may be entered against the defendant. In this case, the court will enter a judgment for the plaintiff on the trial date based on enough evidence from the plaintiff to support the claim. The defendant has lost the case.

If the civil warrant was served by “posting” (see above) the civil warrant to the front door of the defendant’s residence, the court will not enter a default judgment until the plaintiff certifies that at least ten days before, the plaintiff mailed to the defendant a copy of the civil warrant. If you have used the Certificate of Mailing mentioned above, you should show it to the judge or tell the judge that you filed it with the clerk’s office before the trial date. If you cannot show the court that you have mailed a copy of the civil warrant to the defendant at least ten days ago, the case will be continued, and default judgment will not be entered until you can show that you have done so.

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

## What is Removal of the Case?

Before the judge decides the case, the defendant has the right to “remove” the case from the small claims court to the general district court by completing the *Removal to General District Court* form found on the back of the Warrant in Debt Form and giving it to the clerk or judge. If a case is removed, all further proceedings will occur in the general district court where formal rules of practice, procedure, pleadings and evidence apply, and where parties can be represented by lawyers.

## Trial Procedures

### The Question of Representation

In small claims court, all parties represent themselves, except as follows:

- A corporate or partnership plaintiff or defendant may be represented by an owner, a general partner, an officer or an employee of that corporation or partnership.
- Attorneys can appear in small claims court only if:
  - They are appearing on their own behalf and not acting as a lawyer representing the interests of someone else; or
  - The attorney is only appearing for the sole purpose of removing the case to the general district court.
- If the judge thinks that a plaintiff or defendant is unable to understand or participate on his own behalf in the hearing, this person may be represented by a friend or relative if the representative knows the facts of the case and is not an attorney.

## Calling Witnesses

Any party who wishes to call witnesses should consider having the witness served with a subpoena, even if the witness has agreed to appear at the trial or is a defendant. You will be required to pay a sheriff's fee for the service of each witness subpoena.

If the witness has received the subpoena at least five days before trial and the testimony is important to the case, the judge will usually continue the case to a later date if the witness does not appear and the party asks for the continuance. Otherwise, the trial usually will go forward without that witness.

To subpoena a witness, the party must file a *Request for Witness Subpoena*, district court form DC-325, (Request for Witness Subpoena - Instructions) in the small claims division of the clerk's office at least ten days before the trial. The party will need to give the name and current home address of the witness being subpoenaed.

It is important to let your witnesses know you have filed a request for them to be a witness before they receive their subpoenas (except if they are the other party). Witnesses taken by surprise may be angry and less willing to be help out in court.

## **Trials in Small Claims Court**

Each case is tried in an informal manner. Both plaintiff and defendant will be given an opportunity to introduce evidence, ask questions of the witnesses, and explain to the judge why the judge should enter judgment in their favor. The judge can admit any evidence that tends to prove the facts in the case. The judge will not allow witnesses to testify until they have been sworn and will not consider "privileged communications" (statements by certain people that are barred by law from being used in a trial).

## **Judgment Is Entered**

At the end of the case, the judge will enter judgment for either the plaintiff or the defendant. If judgment is for the plaintiff, it may be the result sought by the plaintiff, or it may be less. The person who has the burden of proof must not only prove that he or she has the right to win the case, but also must prove the amount due.

## **Appeal**

If a party wishes to appeal the judgment and the amount in dispute is greater than \$50, the party may file an appeal of the case to the circuit court for a new trial. Notice of the appeal must be filed **within ten days** after the entry of judgment. District court form DC-475, *Civil Appeal Notice*, is used for filing an appeal. If an appeal is filed, the judge will set an appeal bond. **Within thirty days** after judgment is entered, an appealing party must post the required bond with the clerk of

the court, or the appeal will not go forward.

On appeal, the case will be tried anew in circuit court in a formal manner, strictly following all of the rules of evidence and procedure, where lawyers usually represent the parties. In circuit court, a jury may be requested if the claim exceeds \$100.

## Enforcing the Judgment

The plaintiff who wins in a civil case will in most cases be awarded a money judgment. The judgment is the court's order that the defendant (now a judgment debtor) owes the plaintiff (now a judgment creditor) a stated sum of money. Obtaining a judgment is not the same as actually receiving the money. The judgment can only be enforced out of property belonging to the defendant.

The law provides remedies for judgment creditors to enforce judgments. The judgment creditor may contact the general district court clerk's office for more information on court procedures to collect the judgment, including:

- Using a *Summons to Answer Interrogatories* for getting information about the defendant and his property in order to use court collection procedures.
- Obtaining an *Abstract of Judgment* to take to circuit court for recording as a lien against real estate.
- Obtaining a *Writ of Fieri Facias* to have the judgment debtor's personal property sold at public auction to pay the judgment.
- Obtaining a *Garnishment Summons* to secure payment from the judgment debtor's bank account or earnings.

## Forms

Visit the [District Court Forms](#) page to locate forms for small claims.

## Additional Resources

Please see the [VALegalAid.org](http://VALegalAid.org) website for more information.

More detailed information can be found at [Small Claims Court Procedures](#) on the Virginia Judiciary website.

### Links:

[District Court Forms](#)

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