



## PROCEDURES FOR PLAINTIFFS IN CIVIL CASES



### I. INTRODUCTION:

If you cannot resolve your differences with another individual or company, then you may consider pursuing your legal remedy by filing a civil lawsuit. The following is basic procedural information to assist you in filing your lawsuit and bringing your case to trial. Before you file your action, you must make certain that you are in the right court. The General District Court provides remedies in civil actions up to and including \$25,000, plus interest, costs, and attorney's fees.

### II. TYPES OF ACTION:

There are several types of civil actions that may be brought in the General District Court. These actions include:

a. Warrant In Debt:

This is a claim for money you feel someone owes you (for example, breach of contract, property damage, personal injury).

b. Warrant in Detinue:

This is a claim that someone is unlawfully holding personal property that belongs to you and your suit is for the return of the property or its alternate value.

c. Unlawful Detainer:

This is a landlord/tenant action to evict someone who has not paid rent or is unlawfully detaining your real property (land, house, apartment, etc.). You may also claim any rent that is due in this type of action.

### III. FILING SUIT:

The Civil Clerk's Office has the proper forms that need to be completed depending on the type of action you wish to file. The Civil Clerk's Office is located on the second floor of the Courthouse in Room 211 and is open Monday-Friday, 8:00 a.m. until 4:00 p.m. The telephone number is (703) 246-3012. The Clerks will answer questions about the forms and help you select a court date, but they cannot give any legal advice.

The original court date which you select is called a return date. The return date should be set for a Monday - Thursday (Fridays are reserved for tenant/landlord actions only), between thirty and sixty days from the date you file your action, and always at 9:30 a.m.

When you are ready to file your suit, you must pay filing fees which are \$46 and a Sheriff's Service Fee of \$12 per defendant to be served. These must be paid in cash, check, or credit card at the time you file your suit. Other fees will be added (separate check required) if you find it necessary to obtain service on the defendant through the State Corporation Commission, Secretary of the Commonwealth, or the Department of Motor Vehicles. Please check with the Clerk's Office to determine exactly how much it will cost to file your lawsuit. You do not need to ask for witness subpoenas at this time.

If your suit is based upon a contract, note, or an affidavit, you should bring copies of this document to the Clerk's Office when you file your suit so that a copy can be served on the defendant along with the forms you will fill out.

#### **IV. SERVICE OF PROCESS:**

Service of Process is the method of notifying the defendant that he is being sued. A Deputy of the Sheriff's Office will usually deliver the Civil Warrant to the defendant. It is essential that you know the defendant's current address. If the defendant is an individual and his home address cannot be located, his place of employment address will be sufficient in most cases. If the defendant is a corporation, a simple way to locate the address is to call the State Corporation Commission (866) 722-2551 and ask for the name and address of the corporation's registered agent. You may also serve officers of the corporation. If the defendant is doing business under an assumed name, the defendant should be sued under his name and his business name, for example, "John Doe t/a (trading as) Doe Jewelry." John Doe should have on file in the Circuit Court a fictitious name statement indexed under "Doe Jewelry" which lists the real name of the owner, the name of an agent if the owner resides elsewhere, and an address where the owner or agent can be found.

If service is attempted at the defendant's home address, the Sheriff may "post" the service by taping a copy of the summons to the defendant's door. If service is made by posting (rather than in person or on a family member), you are required to mail a copy of the warrant to the defendant by regular, first-class mail at least ten days in advance of taking judgment. This is simply accomplished by mailing a copy of the warrant to the defendant at the time of filing the lawsuit, and signing on the appropriate line on the back of the warrant.

#### **V. RETURN DATE:**

The Return Date Docket is called in Courtroom 2A at 9:30 a.m. You should plan to arrive earlier since there are often lines waiting to enter Public Parking Garage B located on Page Avenue, near the Courthouse. The charge for parking is \$2.00 per hour (or fraction thereof) with a \$10 maximum. Before entering Courtroom 2A, you should check the electronic Civil Docket boards that are between Courtrooms 2A & 2B. Names of plaintiffs and defendants who have cases in civil court that day will be listed alphabetically on the docket board with the courtroom assignment noted beside each name.

The return date is not a trial. If both parties are present and the defendant wants to contest the case, a trial date will be set. If a defendant has been properly served with the case papers but elects not to

appear in court, or if the defendant appears and admits owing you the debt, then the judge will listen to your evidence and may award a judgment based on your testimony. If you fail to appear, your case will be non-suited (dismissed, but you may be able to file again) by the Court.

If the defendant denies the debt or contests the matter, a trial date will be set for about 30 days away. The defendant may also request that you prepare a document called a **Bill of Particulars**. A Bill of Particulars is a more specific statement about the lawsuit you have filed. This means that you will have to write down the specific reasons why you feel the defendant owes you the amount (or items) claimed in your suit. The judge will set the date your Bill of Particulars is due and then you must mail the original to the court and a copy to the defendant. If you fail to file this document on time with the Court and mail it to the defendant, judgment will most likely be awarded in favor of the defendant.

You also have the right to request that the defendant file a document called an **Answer and Grounds of Defense**. This is a document in which the defendant states why he does not believe that he owes you the amount (or items) claimed. This is usually in response to your Bill of Particulars and the judge will also set a date when this document is due. If the defendant does not file it on time, you will be able to ask that judgment be automatically awarded to you.

Once a trial date is set, if you have any witnesses, then you can subpoena them to testify on your behalf. You should ask the Clerk's Office for the correct forms. You should provide your witnesses with advance notice that they will be subpoenaed so that they will have time to make arrangements to appear in court. Subpoenas should be filed at least ten days before the trial date to allow for service. The Clerk's Office can also issue a subpoena for documents, which is called a Subpoena Duces Tecum. This form should be filed at least 15 days before trial.

## **VI. TRIAL DATE:**

Civil trials will be promptly heard in Courtroom 2B at 9:30 a.m. You must be on time. The judge will call the cases listed on the entire trial docket, and each party will state how long it will take for their case to be heard. If you are not present in a courtroom when your case is called, the judge will dismiss your case.

When your case is called, the plaintiff usually sits at the table on the judge's left and the defendant at the table on the judge's right. You should stand when addressing the judge unless told otherwise. As the plaintiff, you have the burden of proving all elements of your case. The technical rules of evidence will apply at the trial of your case. You may wish to speak with an attorney prior to trial to ensure that you are prepared for the proper presentation of your case before the Court. **If you are a corporation, an attorney must represent you at trial.** Usually, the judge will make a ruling at the conclusion of the trial.

If the judge rules in your favor, then you are awarded a judgment against the defendant. Even though you have been granted a judgment for all or a portion of what you sued for, you are never assured of actually receiving the money. The clerk or Sheriff's Deputy will hand you a paper which outlines some of the actions which may be necessary to collect your judgment.

## **VII. APPEAL:**

If you lose the case or if you are unsatisfied with the judgment, you may appeal the case to the Circuit Court. Appeals must be noted in writing within ten calendar days (see the Clerk for Form DC-475, Notice of Appeal) and must be perfected within thirty calendar days from the date of the judgment by paying the Writ Tax, Notice Fee, and posting any required bond. Note that in an Unlawful Detainer action, the Bond, Writ Tax, and Notice Fee must be posted within ten calendar days. Appeal Bonds must be posted by means of cash, postal money order, corporate surety, or an attorney's check written from an escrow account. A certified or cashier's bank check payable to the Circuit Court of Fairfax County is also acceptable. The defendant has the same right of appeal.

## **VIII. ENFORCING THE JUDGMENT:**

If you win a judgment against the defendant, you need to first try to make arrangements outside of court with the defendant for payment of the judgment. If this fails, the court provides processes to help you try to collect on your judgment, however, you must initiate the action.

## **IX. MISCELLANEOUS:**

### **a. Alias Service:**

If the Sheriff is unable to serve the defendant, the court allows one free alias attempt at service. For instance, if the Sheriff returns your suit as "Not found, defendant has moved", and you have a new address, you would want to file an alias. You will need to complete the same lawsuit papers again with a new address, write "Alias" at the top, select a new return date, pay only the \$12 Sheriff's Service Fee, and file the alias within ninety days with the Clerk's Office. You are only allowed one free alias. After that you must refile your lawsuit as a new case.

### **b. Continuances:**

Continuances are not automatically granted and are frequently denied. You need to state a legally valid reason for not appearing. If an emergency arises and you are unable to attend court, you can try calling the Civil Clerk's Office (246-3012) up until 9:00 a.m. the morning of court. The clerk can write a note to the judge which can be placed on your case, however, this does not guarantee a continuance will be granted. You will need to call back to see what happened with your case. If you know in advance that you will not be able to appear on the court date, you should send a written request for a continuance stating why you cannot appear and listing when you will be available. Agreed continuances can also be submitted in writing as long as they state, "by agreement of all parties" and are received two days prior to the court date.

**c. Lawyer Referral Service/Legal Aid:**

The clerks and judges cannot give you any legal advice. If you have a legal question or think you might need to hire an attorney, you can call the Lawyer Referral Service of the Fairfax Bar Association at (703) 246-3780. For a small fee, an attorney will meet with you for a half hour to discuss your case. If you have a limited income, you might be eligible for assistance from the Fairfax Legal Aid Office (Legal Services of Northern Virginia). Their number is (703) 246-4500 and they have an office in the Courthouse right outside of Courtroom 2A in Room 213.1.

**d. Satisfaction of Judgment:**

Once your judgment has been paid in full, the law requires that you notify the Court in writing within thirty days of payment so the case may be marked as satisfied. Failure to do so can result in a fine. A form for noting satisfaction of a judgment is available in the Civil Clerk's Office and online at [www.courts.state.va.us](http://www.courts.state.va.us) (Form DC-458).

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