

VIRGIN ISLANDS SMALL CLAIMS RULES

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Rule 1. General Provisions.

(a) **Title.** These rules shall be known as the Virgin Islands Small Claims Rules and may be cited in short-form as V.I. SM. CL. R.

(b) **Effective Date.** These rules shall take effect as provided in a promulgation order by the Supreme Court of the Virgin Islands.

(c) **Scope.** These rules are applicable to all actions in the Small Claims Division of the Superior Court of the Virgin Islands commenced after or pending on the effective date of these rules, and shall supersede any procedural rules to the contrary.

(d) **Construction.** These rules shall be construed to implement the simple, speedy, and inexpensive trial of actions in the Small Claims Division, and in such manner as to do substantial justice between the parties according to the rules of substantive law.

(e) **Definitions.** All definitions and references found in Rule 1-2 of the Virgin Islands Rules of Civil Procedure shall retain the same meaning in the Virgin Islands Small Claims Rules.

(f) **Computation of Time.** Rule 6 of the Virgin Islands Rules of Civil Procedure shall govern the computation of any time under these rules.

Effective December 1, 2017 (Promulgation Orders 2017-009 & 2017-0009)

REPORTER'S NOTE

Rules 1(a)-(c) are modelled after Rules 1-1(a)-(c) of the Virgin Islands Rules of Civil Procedure. However, due to the simple and expedited nature of small claims cases, Rule 1(c) contemplates that these Rules shall apply without exception to all small claims cases either commenced after or pending on the effective date established by the Supreme Court.

Rule 1(d) implements the statutory requirement that procedure in the Small Claims Division "shall be as informal and summary as is consistent with justice." See 4 V.I.C. § 111.

Rules 1(e)-(f) cross-reference general provisions of the Virgin Islands Rules of Civil Procedure with respect to definitions and computation of time.

Rule 2. Commencement; Form of Complaint; Transfer; Answer.

(a) Complaint Commencing Action. A small claims action is commenced by filing a complaint with the Clerk of the Court.

(1) Signature and contents. The complaint must:

(A) be signed by the plaintiff;

(B) contain a simple statement of the plaintiff's claim;

(C) state

(i) that plaintiff elects to file the case in the Small Claims Division rather than the Civil Division; and

(ii) that the relief requested does not exceed the jurisdictional limits of the Small Claims Division; provided, however, that the plaintiff may waive the excess of his claim to bring it within the jurisdiction of the Small Claims Division.

(2) *Written Document as Basis for Claim.* If the claim is based in part upon a written document, a copy of the document should be attached to the complaint if the document is available to the plaintiff.

(3) *Form.* The clerk of the court may issue a form and instructions that, if completed, will satisfy the requirements of subpart (a) of this Rule. The clerk shall, at the request of the plaintiff, assist in completing the complaint in conformity with these Rules, but the clerk may not provide legal advice.

(4) *Docketing.* The clerk must not refuse to docket a complaint solely because of any defects in its form or title.

(b) Magistrate Division. In accordance with Title 4, section 123(d) of the Virgin Islands Code, all actions commenced in the Small Claims Division shall be concurrently assigned to the Magistrate Division.

(c) Waiver of Jury Trial and Right to Counsel. Except as otherwise provided in these Small Claims Rules,

(1) electing to file a complaint with the Small Claims Division rather than the Civil Division shall be deemed a waiver by the plaintiff of both the right to a jury trial and the right to be represented by counsel at trial, unless plaintiff is subsequently granted a transfer under subpart (d)(3) of this Rule.

(2) if the defendant fails to request a transfer as provided in subpart (d) of this Rule, defendant shall be deemed to have waived both the right to a jury trial and the right to be represented by counsel at trial, if the matter remains in the Small Claims Division.

(d) Transfer. An action filed in the Small Claims Division shall be automatically transferred to the Civil Division if:

(1) the defendant demands a jury trial;

(2) an attorney enters an appearance on behalf of the defendant, or the defendant requests to be represented by an attorney, prior to any party or witness being sworn to give evidence at the Small Claims trial;

(3) the defendant files an answer, counterclaim, or a claim for set-off or recoupment, and the plaintiff thereafter elects to request a transfer;

(4) the court determines that the Small Claims Division lacks jurisdiction over the case;
or

(5) the court finds other good cause for a transfer, such as a need to proceed with discovery.

(e) Answer. It shall not be necessary for any party in the Small Claims Division to file an answer, plea, or other defense in writing, except in cases where the defendant asserts a counterclaim, right of set-off, or recoupment, in which circumstances the court may require a written response to the complaint or another pleading.

(f) Substantial Justice. All pleadings shall be construed to do substantial justice. The court may at any time allow any pleading to be amended as justice requires.

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REPORTER'S NOTE

The first sentence of Rule 2(a) is based on Rule 3 of the Virgin Islands Rules of Civil Procedure. The language of former Superior Court Rule 61, which provides that actions "which are within the jurisdiction of the small claims division shall be docketed in that division," has been removed to recognize that a plaintiff has the right to file an action with the Civil Division, and thus take advantage of the constitutional right to be represented by counsel and to a jury trial.

Subpart (a)(1) is based on Rule 8(a)(1)-(2) of the Virgin Islands Rules of Civil Procedure, as well as the first sentence of former Superior Court Rule 62(a), but also incorporates statutory language found in 4 V.I.C. § 112(b) recognizes that a small claims plaintiff may voluntarily waive the portion of the recovery, exclusive of interests and costs, that exceeds the jurisdictional limits of the Small Claims Division.

Recognizing that in many instances Small Claims proceedings involve a writing between the parties, subpart (a)(2) requires that where the claim is based in part upon a written document, a copy of the document should be attached to the complaint if the document is available to the plaintiff. Subpart (a)(3) provides that a form and instructions may be developed to assist claimants in stating their claims and focusing the proceeding on the issues. It also states that at the request of the plaintiff, the clerk shall assist in completing the complaint in conformity with these Rules, but specifies the clerk may not provide legal advice to a party.

In keeping with the simplicity of Small Claims proceedings, subpart (a)(4) states that the clerk may not reject a complaint docketing simply due to a defect in its form or title.

Rule 2(b) acknowledges the statutory requirement that all small claims actions are within the original jurisdiction of the Magistrate Division of the Superior Court, see 4 V.I.C. § 123(d), and clarifies that small claims cases are therefore assigned to both divisions simultaneously.

Rule 2(c) and (d) harmonize the small claims procedure with the constitutional rights to due process, representation by counsel, and a jury trial. Rule 2(c) provides that a plaintiff who files a complaint with the Small Claims Division has voluntarily waived the right to representation by counsel and to a jury trial; a plaintiff who does not desire to waive such rights may file a complaint with the Civil Division. Rule 2(d) safeguards the rights of defendants by requiring

*transfer of a case out of the Small Claims Division, as of right, if an attorney enters an appearance for the defendant, or the defendant requests to be represented by an attorney, before the Small Claims trial begins, or the defendant demands a jury trial. Where the nature of the proceeding is affected by a counterclaim, claim of set-off or recoupment filed by the defendant, the plaintiff also has a right to request transfer to the Civil Division. Rule 2(d) further provides for a discretionary transfer for other good cause shown, such as the need to conduct discovery. Prior case law implementing protections for the right to counsel and jury trial in Small Claims cases prior to the adoption of these Rules includes: Carvana Ensemble Theater Co. v. V.I. Dept. of Human Service, ST-2012-SM-414, 2012 WL 12517840 at *1 (V.I. Super. Ct., Oct. 16, 2012); Inter Ocean Insurance Agency v. Joseph, SX-2006-CV-177, 2011 WL 13115963 (V.I. Super. Ct., Sept. 28, 2011); Horton v. Govt. of the Virgin Islands, SX-2010-SM-17, 2010 WL 11415023 at *2 (V.I. Super. Ct. June 17, 2010); McCarthy v. Monte, ST-1990-CV-63, 1991 WL 138614 at *2 (D.V.I., June 17, 1991); Regan v. Estate Questa Verde Townhouses, SX-1988-CV-652, 1988 WL 1628330 at *1 (V.I. Terr. Ct., Oct. 4, 1988); Watlington v. Thompson, SX-1982-CV-715, 1983 WL 952732 (V.I. Terr. Ct., Jan. 24, 1983); Carr v. Pena, 432 F.Supp. 828 (D.V.I. 1977).*

Rules 2(e) and (f) are based on former Superior Court Rules 62(b) and (c).

Rule 3. Summons; Service of Process.

(a) Summons.

(1) *Timing.* On the filing of a complaint, the clerk of court shall prepare a summons for the plaintiff, which shall comply with Rule 4(a) of the Virgin Islands Rules of Civil Procedure.

(2) *Return date.* The summons shall set forth a return-day not less than 5, nor more than 30 days, from the date of filing the action, according to the nature and circumstances of the case and the method of service to be employed.

(3) *Explicit Advice of Rights.* The summons form shall contain a written notice conspicuously advising the defendant:

(A) that counsel are not permitted in Small Claims proceedings, and that no jury trial is available;

(B) that the defendant has an automatic right to request transfer of the action to the Civil Division, where assistance of counsel is permitted and a jury trial may be conducted; and (C) that the defendant's failure to make a request for transfer to the Civil Division as provided in Small Claims Rule 2(c) and (d) will be a waiver by the defendant of the right to counsel and the right to a jury trial, if the matter remains in the Small Claims division for trial.

(b) Service of Process. The clerk of court shall arrange for the Office of the Virgin Islands Marshal to serve the defendant with a summons and a copy of the complaint in accordance with Rule 4 of the Virgin Islands Rules of Civil Procedure. It shall be the responsibility of the plaintiff to provide a current address for each defendant and any other information needed to effectuate proper service.

(c) Extension of Time. If service of process is not completed in timely fashion, the court may, upon a showing of good cause, set an extended date for completion of service of process and, if necessary, reschedule the return date for the action accordingly. In its discretion, the court may dismiss the action without prejudice against the unserved defendant.

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REPORTER'S NOTE

Rules 3(a)-(b) cross-reference Rule 4 of the Virgin Islands Rules of Civil Procedure with respect to preparation of the summons and service of process, but also implement revisions in the deadlines formerly found in Superior Court Rule 63(a) with respect to the return-date.

Provisions in Rule 3(a)(3) require that the pre-printed summons forms be revised to carry explicit and prominent written notice advising the defendant that counsel are not permitted in Small Claims proceedings, and that no jury trial is available, and that the defendant has an automatic right to request transfer of the action to the Civil Division, where assistance of counsel is permitted and a jury trial may be conducted. This warning – to be printed on the summons itself – must further advise the defendant that failure to make a request for transfer to the Civil Division as provided in Small Claims Rule 2(c) and (d) will be a waiver by the defendant of the right to counsel and the right to a jury trial, if the matter remains in the Small Claims division for trial.

Rule 3(b) implements the current uncodified practice of the Office of the Virgin Islands Marshal serving small claims complaints.

Rule 3(c) permits that the time for service of process be extended if the marshal fails to effectuate service as required. However, if the failure to effectuate service is due to the failure of the plaintiff, the court is authorized to dismiss the small claims action without prejudice as to the unserved defendant.

Rule 4. Pre-Trial and Trial Procedures.

(a) Pre-Trial Procedure. Due to the expeditious and informal nature of Small Claims proceedings, pre-trial procedure—including, but not limited to, pre-trial conferences, discovery (such as the taking of depositions, use of interrogatories and requests for production of documents) and the filing of motions—shall not be permitted in the Small Claims Division, except with respect to motions to dismiss for lack of jurisdiction or for transfer of the action to the Civil Division.

(b) Return Date Proceedings.

(1) *Oral Advice of Rights to the Parties.* At the outset of proceedings on the return date the court shall address the parties orally, advising them that:

- (A) counsel are not permitted in Small Claims proceedings;
- (B) no jury trial is available;

(C) the defendant has an automatic right to request transfer of the action to the Civil Division, where assistance of counsel is permitted and a jury trial may be conducted;

(D) the plaintiff has an automatic right to request transfer of the action to the Civil Division if the defendant has filed an answer, counterclaim, or a claim of set-off or recoupment; and

(E) failure of a party to make a request before trial for transfer to the Civil Division will be a waiver of the right to counsel and the right to a jury trial.

(2) *Conciliation.* On the trial date, but before trial, the court may direct the parties to make an earnest effort to settle the controversy by conciliation.

(3) *Failure of One or Both Parties to Appear.*

(A) If the defendant fails to appear on the return date, after having been properly served, judgment may be entered by default where the claim is for a liquidated amount, or judgment may be entered upon ex parte proof where the claim is unliquidated.

(B) If the plaintiff fails to appear on the return date, the court may direct that the suit be dismissed without prejudice for failure to prosecute, or that the case be continued.

(C) If the defendant has filed a counterclaim, and the plaintiff fails to appear on the return date, the defendant may proceed to a trial on the merits of the counterclaim on the return date unless the counterclaim was filed in writing and served on the plaintiff, in which case the court may enter judgment by default where the claim is for a liquidated amount or judgment upon ex parte proof where the claim is unliquidated.

(D) If both parties fail to appear on the return date, the court may order the case dismissed without prejudice for want of prosecution, or make any other just and proper disposition thereof, as justice may require.

(4) *Trial on the Return Date; Rescheduling.* Where both parties appear on the return date set forth in the summons, the trial shall be held on that date unless, for good cause shown, the trial is rescheduled for a later date. If trial of the case set for a later date, the court shall issue a subpoena to each party with the date and time that they must appear for trial; provided, however, that if any of the parties are present in court, an oral order setting a new trial date, combined with a written card or similar document with the new trial date and time, shall suffice as proper notification of the adjourned date for those parties.

(5) *Conduct of the Trial.* The court shall conduct the trial in such manner as to do substantial justice between the parties according to the rules of substantive law, and shall not be bound by the statutes or rules governing practice, procedure, pleadings, or evidence, except those statutes and rules relating to privileged communications and the swearing of parties and witnesses. All proceedings shall be recorded, either electronically or stenographically.

REPORTER'S NOTE

Rule 4(a) clarifies that pre-trial procedure, including discovery and motion practice, shall not occur in the Small Claims Division, except when necessary to resolve a jurisdictional objection or a request to transfer a case out of the Small Claims Division.

Rule 4(b)(1) provides additional protection for the rights of the parties regarding assistance of counsel, Due Process and jury trial options. It requires that at the very outset of proceedings on the return date the court must address the parties orally, advising them that counsel are not permitted in Small Claims proceedings, and that no jury trial is available, but that the defendant has an automatic right to request transfer of the action to the Civil Division, where assistance of counsel is permitted and a jury trial may be conducted; and that the plaintiff has an automatic right to request transfer of the action to the Civil Division if the defendant has filed an answer, counterclaim, or a claim of set-off or recoupment. The court must further advise the parties that if they fail to make a request before trial for transfer to the Civil Division they are waiving the right to counsel and the right to a jury trial.

Rule 4(b)(2) is similar to former Superior Court Rule 64 but is simpler, encouraging the judge in a Small Claims proceeding to encourage the parties to resolve the case amicably between them prior to starting the hearing.

Rule 4(b)(3) is modeled after former Superior Court Rule 63(c), pertaining to the failure of one or more parties to appear at the small claims trial.

Rule 4(b)(4) is based in part on former Superior Court Rule 63(b), but provides that a subpoena need not issue if a new trial date has been orally set in the presence of a party, provided that the party receives a card or similar written document with the new trial date and time.

Rule 4(b)(5) is modeled after the portion of former Superior Court Rule 64 pertaining to the conduct of trial, including that the trial shall be conducted in such manner as to do substantial justice in accordance with substantive law. It is specified in this subpart that Small Claims trials are to be recorded, electronically or stenographically, consistent with the fact that an appeal from a Small Claims judgment will not cause a de novo retrial, but will be an appeal based on the record from the Small Claims proceeding.

Rule 5. Judgments.

(a) Generally. At the end of the trial, the court may immediately state its decision and direct the entry of judgment. Findings must be made, but no written findings shall be required.

(b) Interest and Costs. In accordance with section 112 of Title 4 of the Virgin Islands Code, a judgment may include an award of interest and costs, even if such an award would grant a party a recovery greater than the jurisdictional limits of the Small Claims Division.

(c) Installment Judgments. When a judgment is ordered to be paid in installments, the clerk shall furnish the judgment defendant with a memorandum of the dates on which and the amounts in which such payments are to be made, with a warning that the stay of execution will be vacated upon any default without just excuse. Upon a showing by the judgment plaintiff that the defendant has failed to comply with such order, the judgment plaintiff shall have the right to

exercise all remedies otherwise available in the Superior Court for the enforcement of such judgment.

(d) Enforcement. A judgment entered in the Small Claims Division may be enforced in accordance with Rule 69 of the Virgin Islands Rules of Civil Procedure.

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REPORTER'S NOTE

Rule 5(a) implements the current practice of the Small Claims Division to announce judgment orally after trial without the need for written findings.

Rule 5(b) recognizes the statutory authority of the court to award interest and costs even if doing so would result in a judgment that would exceed the jurisdictional limits of the Small Claims Division.

Rule 5(c) is modelled after former Superior Court Rule 66 with respect to installment judgments, while Rule 5(d) provides for other judgments to be enforced in the same manner as other judgments under Rule 69 of the Virgin Islands Rules of Civil Procedure.

Rule 6. Post-Judgment Motions; Appeals.

(a) Generally. Except as otherwise provided in these Rules, the filing of post-judgment motions shall not be permitted in actions in the Small Claims Division.

(b) Relief from Default Judgment. A party may move within 60 days after entry of a default judgment to set aside that judgment. The motion must state good cause for granting such relief. The motion does not affect the judgment's finality or suspend its operation.

(c) Stay. Upon motion of a party or on its own initiative, the court may stay the commencement of any steps to enforce a judgment pending the disposition of a motion for relief from a default judgment, or pending the filing and determination of an appeal.

(d) Clerical Mistakes. The court may, on motion of a party or on its own initiative, correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record; provided, however, that while an appeal is pending, such a mistake may be corrected only with leave of the appellate tribunal.

(e) Appeals. Appeals from final judgments of the Small Claims Division shall be taken in accordance with Rule 322 of the Rules of the Superior Court.

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REPORTER'S NOTE

Rule 6(a) limits the types of post-judgment motions that are cognizable in the Small Claims Division, in recognition of the fact that the parties are appearing pro se.

Rules 6(b) and (c) recognize that – particularly in the case of non-appearance by a defendant properly served, default judgment may occur. Subpart (b) provides a 60-day period in which the defendant may move thereafter to set aside that judgment. The motion must state good cause for granting such relief. While subpart (b) states clearly that the filing of such a motion does not affect the judgment’s finality or suspend its operation, subpart (c) expressly recognizes that on motion of a party or on its own initiative, the court may stay the commencement of any steps to enforce a judgment pending the disposition of a motion for relief from a default judgment, or pending the filing and determination of an appeal

Subpart 6(d) follows prior law on the correction of clerical errors.