



# CENTRAL VIRGINIA LEGAL AID SOCIETY

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## Getting Sued

A person or business you owe money to is called a creditor. If a creditor wants to force you to pay a debt, they first must ask the court for a judgment. Many people feel that having a judgment against them is the worst possible thing. A judgment simply is a piece of paper at the local courthouse that says you owe someone a certain sum of money. This allows the creditor to use legal actions to collect the judgment. However, the creditor first must get a judgment.

### How does a creditor get a judgment?

To get a judgment, a creditor must follow these steps.

- File a lawsuit in court.
- Serve (legally deliver) you a copy of the court papers in a manner allowed by law.
- Go to court at the date and time of your hearing.
- Get a judgment from the court saying you must pay.
- Wait 21 days after the date of the judgment.

If a creditor wants a judgment of \$4,500 or less, the lawsuit must be filed in General District Court. A creditor who wants a judgment of \$25,000 or more must file in Circuit Court. If a creditor wants a judgment between \$4,500 and \$25,000, the lawsuit may be filed in either court. Lawsuits between \$4,500 and \$25,000 usually are filed in General District Court.

### How does a creditor file and serve a lawsuit?

A creditor starts a lawsuit in General District Court by filing a Warrant in Debt. Although this court paper is called a “warrant,” it is not used in a criminal case. It is used only in a civil (non-criminal) case. A creditor starts a lawsuit in Circuit Court by filing a Motion for Judgment. Court papers must be served (legally delivered) on you. This may be done three different ways.

- Given to you in person, usually by a Deputy Sheriff.
- Given to a member of your household, usually by a Deputy Sheriff. The household member must be 16 or older. The person serving the court papers must explain what they are.
- Posted on your front door and then mailed to you by first class mail.

Court papers can be legally served on you, even if you never actually get them. If they were properly given to a household member who didn’t tell you about them, you still were legally served. If they were properly posted and mailed to you but you never saw them, you still

were legally served. Both these things are unusual, but they do happen. You should tell household members to pay attention to court papers, and you should pay attention yourself.

### **Where should a creditor file a lawsuit?**

You should be sued in one of three different places: the county or city where you now live, or where you incurred (took on) the debt, or where you agreed in writing you could be sued. However, under Virginia law, you can be sued anywhere in the state, even if you don't live there and had no dealings there. If this happens, you should ask the court to move, or transfer, the lawsuit. Do this even if you agree on the debt you owe. If the lawsuit is heard and judgment granted far away, any legal action to collect the judgment also will be far away. You could be forced to go far away if the creditor wants to ask questions (called debtor interrogatories) to help collect its judgment.

### **What should I do if a creditor files a lawsuit far away?**

To ask to transfer a lawsuit, you should write a letter to the court. Put the court's name and address in your letter, and your name and return address. Put the name of your case, your case number, and your hearing date in your letter. You can find this information on your court papers. Tell the court you "object to venue" and you move to transfer to your local court. Tell the court where you incurred the debt and where you now live. Sign and date your letter.

Copy your letter and save it. You may want to send your letter by certified mail, return receipt requested. Save the certified mail receipt and the green return receipt. Mail your letter so it will arrive before your hearing date. The court will notify you if the lawsuit is moved. If this happens your local court will tell you the date, time, and place of your new court hearing.

### **What do papers from General District Court say?**

Papers from the General District Court will tell you the date, time, and place of your court hearing. This hearing may be your only chance to dispute or oppose the claim against you. If you do not agree with the claim, go to the hearing. Get there early so you can find your courtroom and watch how the court handles other cases.

### **What do papers from Circuit Court say?**

Papers from the Circuit Court will not give you a date, time, or place of your court hearing. Instead, the papers say you have 21 days after getting them to file a written answer (called a Grounds of Defense) with the Circuit Court. The Grounds of Defense must reply to each numbered paragraph of the Motion for Judgment, and must admit or deny each numbered paragraph. Although you can file your own Grounds of Defense in Circuit Court, you probably will need a lawyer to help with the case. Procedures in the Circuit Court are more complicated.

### **What if I can't go to my General District Court hearing?**

If you can't go to General District Court on the date of your court hearing, you must ask the court for a new hearing date. This is called a "continuance." Different General District Courts have different rules for getting a continuance. In some courts, the Clerk can give a continuance. In other courts, only the Judge can give a continuance.

To find out the rule for your court, call the Clerk's Office as soon as you know you can't go to court on the date of your court hearing. Ask to be told the rule to get a continuance, and follow that rule. In addition to calling the Clerk's Office, it's a good idea to write and/or fax a letter to the court explaining why you need a continuance.

### **What should I do in General District Court?**

Papers from the General District Court will say one of two different things.

- To dispute this claim, you must appear on the return date for the judge to set another date for trial, or,

- To dispute this claim, you must appear on the return date to try this case.

If you appear on the return date for the judge to set another date for trial:

- Tell the Judge this is a contested case.
- Tell the Judge you want a later date for trial.
- Ask the Judge to order "pleadings" – that is, a Bill of Particulars to be filed by the Plaintiff, and a Grounds of Defense to be filed by you.

A "Bill of Particulars" is a written statement giving details why the lawsuit should win. It is a more complete explanation of why you are being sued. If the Judge orders a Bill of Particulars, the Plaintiff will have a date by which to file it. If the Plaintiff does not file by this date, the Plaintiff may lose automatically.

A "Grounds of Defense" is a written statement giving details why the lawsuit should not win. It is a more complete explanation of why you have a defense. If the Judge orders a Grounds of Defense, you will have a date by which to file it. If you do not file by this date, you may lose automatically.

If you appear on the return date, or the trial date, to try the case, get prepared for your hearing in advance. Bring papers, receipts and witnesses that support your case.

If a witness doesn't want to come to court, you can ask the Clerk to subpoena the witness. A subpoena is a court order that says a witness must come to court. Ask for the "Request for Witness Subpoena." This also is called "Form DC-325." You need the full name and current physical address (not a Post Office box) for each witness. You must give this information to the Clerk at least 10 days before the trial date.

If someone has a paper but doesn't want to bring it to court, you can ask the Clerk to subpoena the papers. This is called a subpoena *duces tecum*. This is a court order that says a person must bring the papers to court. Ask for the "Subpoena Duces Tecum." This also is called "Form DC-336." You need the full name and current physical address (not a Post Office box) of

the person who has the papers. You must give the name and address of the person who has the papers, and a description of all papers you want, to the Clerk at least 15 days before the trial date.

You must pay \$12.00 for the subpoena or the subpoena *duces tecum*. If you don't have enough money to pay this (or any other) fee, ask for the "Petition for Proceeding in Civil Case Without Payment of Fees or Costs." This also is called "Form CC-1414." You must be a Virginia resident to file this form. Only the Judge can allow you to proceed without paying fees.

### **Do I need a lawyer in General District Court?**

You don't need a lawyer in General District Court, but a lawyer can help you. If your dispute is serious, talk to a lawyer about representing you in court. Lawyers can help people reduce, or even wipe out, the amount owed. You may have defenses to the claim.

- You may have been sued for someone else's debt.
- You may have been sued too late. Lawsuits based on a writing usually must be filed within five years. Lawsuits not based on a writing usually must be filed within three years.
- You may have been sued by a "debt buyer." A debt buyer purchases debt that has been written off by the creditor, generally because it is too old, has been bankrupted, or is uncollectible. Usually, the debt buyer cannot prove that any money actually is owed.
  - The amount of the debt may be figured wrong.
  - The person or business suing you may have broken a consumer protection law.
  - If you also are asked to pay attorney's fees, you can dispute the amount of the fees even if you agree on the debt you owe.

### **Do I have to go to General District Court?**

If you don't want to oppose the claim, you don't have to go to court. You won't be arrested if you do not go to court. That only happens in criminal cases. This is a civil (non-criminal) case. If you don't go to court, and the other side does and proves its case, you will lose the case. If you want to dispute or oppose the claim against you, you must go to court.

If both sides come to court, the Judge will hear both sides and decide who wins. The Judge's final decision is the judgment. If you lose, the judgment will include the amount you owe and \$62 in court filing fees. Sometimes, the judgment will include the other side's attorney's fees. So, the judgment can include the money you owe, court fees, attorney's fees (if the Judge orders it), and interest on these items.

### **Can I appeal from General District Court to Circuit Court?**

If you don't agree with the Judge's decision, you can appeal your case to Circuit Court. You must go to the General District Court clerk's office within 10 days of the judgment and file a written Notice of Appeal. You also will have to post an appeal bond, of cash or property, within 30 days for the amount of the judgment and the cost of the appeal. You probably will need a lawyer to help with the appeal. Procedures in the Circuit Court are more complicated.