

Your Guide to Civil Litigation in General District Court

The purpose of the Guide is to give you general legal information that will make it easier for you to present your case to the Court. It does not discuss every aspect of the law, or all the legal issues that may come up in any particular matter. In addition, it is not intended to advise you on a particular case. If you find that you are in need of legal advice, please contact one of the following resources:

Central Virginia Legal Aid Society 804-648-1012	Legal Aid Justice Center 804-643-1086
Hunton & Williams Church Hill Office 804-775-2248	Virginia Lawyer Referral Service 800-552-7977

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Introduction

This Guide is meant to help a person understand the general rules and procedures of a court case in the General District Court.

What is General District Court?

General District Court (GDC) is a trial court that decides civil claims involving an amount of money up to \$25,000. Suits for recovery of personal property and virtually all claims for rents and damages may be recovered in any amount. All cases heard in GDC are decided by a judge; there are no jury trials.

What is Small Claims Court?

Small Claims Court (SCC) is a trial court that decides civil cases involving an amount of money or personal property valued up to \$5,000. The rules and procedures for SCC are much more informal, as compared to GDC, but still provide for valid legal judgment. For more information on SCC, please consult "Small Claims Court Procedures," published by the Supreme Court of Virginia.

Who can sue or be sued in GDC?

A civil lawsuit is a case in which a person or business asks for money or property from another. The party who brings the lawsuit is called the plaintiff and the party against whom the lawsuit is brought is called the defendant. Any Virginia resident, including corporations, can sue or be sued in GDC. Also, a non-Virginia resident can sue or be sued if he/she/it:

- transacts business in or supplies goods/services to anywhere in the Commonwealth of Virginia;
- commits a tort (civil wrong) in the Commonwealth of Virginia; or,
- owns, uses or possesses real property in the Commonwealth of Virginia.

How do I file a lawsuit in GDC?

If you choose to file a lawsuit without an attorney, you first must go to the offices of the Clerk of the GDC in the city or county where:

- the defendant lives, is employed or has a regular place of business;
- the incident upon which your claim is based took place; or,
- if the defendant is a corporation, its principal office or registered agent is located.

If you plan to sue a defendant for money, ask the Clerk to provide you with a Warrant in Debt. To complete this form, you must provide the following information: (1) your name and address, (2) the name and address of the person, business or corporation you are suing, (3) the amount of your claim, (4) the reason for the lawsuit, (5) if the defendant is a corporation, the name and address of its registered agent, and (6) damages you are seeking for wrongful retention of property.

If you plan to sue a defendant for the return of property, ask the Clerk to provide you with a Detinue Warrant. To complete this form, you must provide the following information: (1) your name and address, (2) the name and address of the person, business or corporation you are suing, (3) a description of the property to be recovered and its approximate value, (4) the reason for the lawsuit.

The Clerk does not and cannot give legal advice; any assistance provided should not be treated as legal advice.

The Clerk will provide you with a date and time for the first hearing on your lawsuit (known as the "return date"). You must appear in GDC on that date and at that time in order to argue the case or schedule a future trial date. Be sure to ask the Clerk when you file your lawsuit whether trials are heard on the return date; most trials are not heard on the return date. The Judge may dismiss your case if you fail to appear on the return date.

How much does it cost to file a lawsuit?

The fee to file a Warrant in Debt or a Detinue Warrant depends upon the city or county in which you file. The fee covers the cost of having the sheriff serve one defendant with a copy of the warrant (each additional defendant may require an extra fee). You may also hire a private process server to serve the warrant, and the Clerk may have more information regarding that option. Whatever method you choose, if you ultimately win your lawsuit, the defendant may be ordered to reimburse you for this cost. If you cannot afford to pay the fee, you may still be able to file the lawsuit without paying any costs, or in forma pauperis. To proceed in forma pauperis, you must file with the Clerk a document asking the Judge for this exception, along with a sworn statement of your income and expenses. The Court will notify you later if your request has been granted.

What if someone files a lawsuit against me?

If you receive a Warrant in Debt or a Detinue Warrant in which you are named as a defendant, it is your choice whether to appear at the return date. This hearing may be the only opportunity you will have to dispute plaintiff's allegations against you. If you cannot go on the scheduled date or time, you may call the Clerk's office and ask for a postponement (known as a continuance). The Judge will decide whether to grant a continuance, so let the Clerk know why you cannot appear and whether you dispute the plaintiff's claims. If you choose not to attend the hearing at all, the Judge may decide for the plaintiff and order you to pay the amount or return the property sought by the plaintiff.

What will happen on the return date?

If you are the plaintiff, check with the Clerk to insure that the defendant was properly served with the Warrant. If the defendant is not properly served, then likely there will not be a hearing on the return date, and you may have to try service again.

Be sure to arrive at the GDC on the correct date and on-time. If the plaintiff does not appear, then the Judge may dismiss the case. If the defendant does not appear, then the Judge may award the plaintiff the remedy sought in the Warrant.

During the hearing, both the plaintiff and the defendant are expected to be courteous to each other and to the Judge. Parties should speak only to the Judge, and not to each other. They should not argue with each other or interrupt someone who is speaking. If you disagree with what the other side is saying, tell the Judge when it is your turn to speak.

When your case is called, the plaintiff usually sits at the table to the Judge's left and the defendant sits at the table to the Judge's right. Both parties will be asked to swear to tell the truth (either before or at the time the case is called). If the case is uncontested (the defendant does not challenge the plaintiff's claims), then the Judge may rule on the case at this hearing. If the case is contested (the defendant challenges the plaintiff's claims), the Judge will schedule a trial for a later date.

If a new trial date is set, the Judge may order the plaintiff to file with the Clerk, with a copy mailed to the defendant, a written statement (also known as a "Bill of Particulars") that details the plaintiff's claim, the evidence that he/she plans to present to support

the claim (including copies of any documents) and any monetary damages. The Judge may also order the defendant to file with the Clerk, with a copy mailed to the plaintiff, a written statement that details his/her defense against the plaintiff's claims and the evidence he/she plans to present in support (also known as a "Grounds of Defense"). If the Bill of Particulars and/or Grounds of Defense are not filed properly and on-time, the Judge may enter judgment in favor of the opposing party.

The Bill of Particulars or the Grounds of Defense should have the following information listed at the top of the first page: (1) plaintiff's name, (2) defendant's name, (3) case number, (4) name of the court (for example, "General District Court for the City of Richmond"), and (5) date of the hearing/trial.

What should I do to prepare for the trial?

Prior to trial, you should organize any contracts, papers, letters, or receipts that relate to your claim. Bring these documents with you to the trial, as the Judge's decision will often depend upon written support of your claims or defenses. If there are documents that would be helpful to your claims or defenses, but these documents are in the possession of another person, including the other party, you may ask the Clerk for a subpoena duces tecum. A subpoena duces tecum orders whoever is in possession of the documents to bring the documents to the trial. You must request a subpoena duces tecum no later than fifteen days prior to your hearing date. The fee for service of a subpoena duces tecum is \$12.00 each.

If there is anyone who can support your claims or defenses, you should speak with him/her about testifying at the trial as a witness. If your witness will not come voluntarily, you may ask the Clerk for a subpoena, which will make that witness' appearance mandatory. You must request a subpoena no later than ten days prior to your hearing date. The fee for service of a subpoena is \$12.00 each.

What if I'm not ready to go to trial?

You can file a non-suit, up until the time the judge makes a decision. A non-suit is an agreement by plaintiff not to proceed in that suit against that defendant, but it is not a bar to bringing a future action against the same defendant. In general, and with some exceptions, you can do this once as a matter of right.

What will happen at the trial?

Similar to the return date hearing, be sure to arrive to GDC on the correct date and on-time. If the plaintiff does not appear, then the Judge may dismiss the case. If the defendant does not appear, then the Judge may award the plaintiff the remedy sought in the Warrant.

Both parties will again be asked to swear or affirm to tell the truth (either before or at the time the case is called). The Judge may then ask both parties to give a very short summary of their respective claims or defenses (known as "opening statements").

Because a trial is decided based on the evidence presented, you must arrange to have all of your evidence present in court on the trial date. Evidence includes your sworn testimony, as well as the testimony of your witnesses. The Judge may ask you questions, and will also allow the other party to question you. Also, when your witnesses are called to testify, they may be questioned by the Judge and the other party. The Judge will generally not allow any testimony based on secondhand knowledge, so only select witnesses who have direct knowledge of what occurred. Evidence also includes any documents that are relevant to your case. This type of evidence includes photographs, written agreements, leases, invoices, bills of sale, receipts, business or medical records, etc. Evidence does not include a written statement or affidavit of a witness who is not able to testify in person. If a key witness who has been subpoenaed does not show up, you can ask the judge for a continuation of the case; however, if you did not subpoena your witnesses, and they do not show on the day of trial, a judge is not likely to grant you a continuance due to the failure of your witnesses to appear.

Generally, the Court will not allow any testimony based on the use of documents made by persons not present in the courtroom. However, there are two exceptions to this general prohibition. First, all public documents are admissible if they have been certified by the issuing agency as true copies of the agency's records. Second, if you are seeking to recover for damages to personal property, you may present a sworn written statement (also known as an "affidavit") from a repairperson or insurance estimator instead of his/her testimony. The affidavit must state (1) that your repairperson or estimator is qualified to determine the amount of damage to the property, (2)

the approximate length of time that he/she has been in that business, (3) the trade name and address of his/her business or employer, and (4) an itemized list of the damage and repair costs. If the plaintiff is seeking to recover damages in excess of \$1,000, the affidavit will only be admissible if the plaintiff obtains the defendant's consent, or delivers a copy to the defendant, at least seven days prior to the trial date.

After both sides have presented all of their evidence, the judge might ask each side to make a short statement summarizing the case (also known as "closing statements"). At this point, the Judge will usually make a decision as to whether the plaintiff or defendant wins. If the plaintiff wins, the Judge will "enter judgment" and award either all or part of the relief requested by the plaintiff. If the defendant wins, the Judge will enter judgment in favor of the defendant or dismiss the case.

How do I enforce the Judge's decision?

If the plaintiff wins judgment against the defendant, the parties should first try to make arrangements outside of court for payment of the award. GDC does not accept payment on the judgment; whoever wins the case must make the arrangements. The Court, though, cannot force a successful plaintiff to accept any arrangements offered by the defendant. If arrangements fail, the Clerk can explain the processes available to help collect on the judgment, and assist with the completion of any paperwork; however, these processes must be initiated by the plaintiff.

If the defendant cannot pay the judgment right away, the defendant may work out a payment plan with the plaintiff. However, the plaintiff, working with the Clerk and the Sheriff, is entitled to levy and/or seize the defendant's property and assets to satisfy the judgment.

Once the judgment has been paid in full, the law requires that the plaintiff notify the Court in writing within thirty days of payment so that the case can be marked as satisfied. Failure to do so can result in a fine of up to \$50.00.

How can I challenge the judge's ruling?

Under certain circumstances (for example, if you have a legitimate reason for missing the hearing), you can file a motion to rehear.

Otherwise, if you disagree with the decision of the GDC, you may file, in writing, an appeal to the Circuit Court within ten days of the judgment date or else lose the right to do so. If the defendant appeals, he/she may have to post an appeal bond within thirty days of the judgment date (ten days in cases of unlawful detainer) to satisfy any final judgment and costs at the Circuit Court level. If the bond is not given as the Clerk instructs, the appeal to the Circuit Court may fail.

Local Resources for Legal Information

- Public Law Library, City of Richmond Public Library on Franklin Street
- University of Richmond Law School Library

References

"General District Courts – Information Pamphlet," published by the Supreme Court of Virginia, <http://www.courts.state.va.us/courts/gd/gdinfo.pdf>

"Small Claims Court Procedures," published by the Supreme Court of Virginia, http://www.courts.state.va.us/resources/small_claims_court_procedures.pdf

"Have You Been Sued in General District Court?" published by the Legal Services of Northern Virginia, <http://www.lsnv.org/Pamphlets>

"Getting Sued," Virginia Legal Aid Society, January 2012, <http://www.vlas.org/documents/512221Getting%20Sued.pdf>

"How to Sue For Small Sums," City of Alexandria Consumer Affairs <http://alexandriava.gov/consumers/info/default.aspx?id=2780>

"Know Your Rights in General District Court," Virginia Legal Aid Society, July 2011, <http://www.vlas.org/documents/500891Know%20Your%20Rights%20in%20General%20District%20Court.pdf>

"How to Try or Defend a Civil Case When You Don't Have a Lawyer," published by the Civil Court of the City of New York, 2005, <http://www.nycourts.gov/publications/GuideforProSes.pdf>

"A Judgment Has Been Entered Against You - Now What?" published by the York County General District Court, <http://www.yorkcounty.gov/Default.aspx?tabid=4440>

"Taking a Civil Case to General District Court," Virginia Legal Aid Society, April 2012.