

# **D.C. SUPERIOR COURT**

## **RULES OF PROCEDURE for the**

### **SMALL CLAIMS AND**

### **CONCILIATION BRANCH**

These rules are current as of January 1, 2012. These rules are subject to amendment. Parties are responsible for knowledge of any subsequent amendment to these rules.

## **Rule 1. Scope of Rules**

These Rules govern the procedure in actions brought in this Court pursuant to D. C. Code §§ 11-1321 and 16-3901 et seq. (1981). When any case so brought is certified to the Civil Division pursuant to SCR SC 6, such case shall be scheduled for trial on an expedited basis and shall remain subject to these Small Claims and Conciliation Rules in all respects. When any case so brought is certified to the Civil Division pursuant to SCR SC 8, it shall be subject in all respects to the Superior Court Rules of Civil Procedure.

These Rules may be known as Superior Court Rules of Procedure for the Small Claims and Conciliation Branch and may be cited as Superior Court Rules--Small Claims or SCR-SC. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

## **Rule 2. Applicability of Certain Superior Court Rules of Civil Procedure**

Except where inconsistent with the Rules of this Branch or the expeditious and informal nature of proceedings therein, the following Superior Court Rules of Civil Procedure are applicable to actions brought in the Small Claims and Conciliation Branch of the Court: Rules 5, 6, 8, 9, 10, 11, 12(b)-(h), 14, 15, 16 (exclusive of 16-I), 17, 19, 20, 21, 22, 23, 23.2, 24, 25, 38, 39, 40-I, 41, 42, 43, 44, 44.1, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 62-I, 63, 64, 65, 65.1, 66, 67, 68, 69, 70, 71, 72, 73, 77, 79, 80, 82, 84, 86, 101, 102, 103, 201, 202, and 203.

### **COMMENT**

Any reference herein to a particular rule, as, for example, “Rule 5”, comprehends both the original rule and any addenda thereto, e.g., “Rule 5-I.”

### **Rule 3. Commencement of Actions**

**(a) Filing the Statement of Claim.** Actions shall be commenced in this branch by the delivery to the clerk of a statement of claim, verification and notice (together with an exact copy for each defendant), printed on plain white paper approximately 8 1/2 inches wide by 11 inches long. Said pleading shall be in a form prescribed in Small Claims Forms 1-11. The statement of claim shall contain a simple but complete statement of the plaintiff's claim, and shall be accompanied by a copy of any contract, promissory note or other instrument upon which the claim is based.

**(b) Entries by the Clerk.** Actions commenced in this branch shall be consecutively numbered each year commencing with the number one (1), and the letters "SC" shall be placed ahead of such number to distinguish actions in this branch from proceedings in other branches or divisions of the court. Every paper filed shall have noted thereon by the clerk the date of the filing thereof.

**(c) Addresses of Parties and Attorneys.** The addresses and telephone numbers, if any, of the parties and their attorneys stated in the original statement of claim or first given by them, shall be considered as the true addresses and telephone numbers of such parties and attorneys for the purpose of all subsequent notices in the case, unless such party or attorney notifies the clerk in writing of a change in such address.

#### **Rule 4. Process**

**(a) In General.** Service of process shall be made by serving a copy of the statement of claim, verification and notice, and any attachments thereto, in one of the following ways which may, at the plaintiff's election, be attempted either concurrently or successively:

(1) By the United States Marshal or his deputy only by Court order.

(2) By any competent person over the age of 18 years not a party to or otherwise interested in the suit who is a bona fide resident of, or has a regular place of business in, the District of Columbia, and who is specially appointed by the judge or approved by the Clerk for that purpose.

(3) By delivering a copy of the statement of claim and verification to the Clerk who shall, on the day of filing, enclose a copy of the statement of claim, verification and notice in an envelope addressed to the defendant, prepay the postage with funds obtained from plaintiff, and mail the papers forthwith, noting on the record for that case the day and hour of mailing, and the registry or certification number.

#### **(b) When Service by Mail Is Valid.**

(1) *Delivery of Notice.* Service shall be deemed valid if it is delivered by the postman to the addressee or to any other responsible person qualified to receive the addressee's registered or certified mail, in accordance with the postal laws and regulations of the United States, which laws and regulations shall be judicially noticed in this branch. Service shall not be set aside on the ground that the notice was delivered to a person not so qualified, if the notice in fact came to the attention of the addressee within a reasonable time after delivery by the postman, and within a reasonable time before the date specified in said notice.

(2) *Notice Valid Although Refused.* If notice in fact came to the attention of the addressee within a reasonable time as provided in subsection (b)(1), such notice shall be valid although refused by the defendant and not delivered for that reason, provided that promptly upon receipt of notice of such refusal the clerk shall mail to the defendant by ordinary mail a copy of the statement of claim and verification together with a notice stating that despite such refusal the case will be proceeded with on the date specified in the original notice, naming that date and hour, and warning the defendant that judgment by default will be rendered against him unless he appears to defend the suit.

(3) *Return Receipt to Be Filed.* Upon receipt by the clerk, every registered or certified return receipt shall be promptly attached to and filed with the original statement of the claim. The clerk shall promptly note on the docket sheet the fact of having received such return receipt and whether such receipt shows delivery to the defendant, or other responsible and qualified person; and the date of such delivery, or a refusal by the defendant.

(4) *Date of Service.* Service shall be deemed made as of the date when the notice is delivered and the return receipt is signed by the defendant or other responsible or qualified person; or if such

notice is refused by the defendant, and the notice provided in subsection (b)(2) is forthwith sent by ordinary mail, as of the date when the registered or certified mail notice would have been delivered, except for such refusal.

**(c) Proof of Service by Private Individual.** When service is made by a private individual under these rules, he shall make proof of service by affidavit before the clerk in the manner prescribed in SCR-Civil Rule 4(c)(2).

**(d) Return.** If the notice be not served by the 25th day after its issuance, it shall be returned to the Clerk's Office.

**(e) Applicability of Civil Rule 4.** Except as herein provided, service and proof of service shall be made pursuant to SCR-Civil Rule 4, (e), (f), (g), (h), (i), (j), (k), and (n).

**(f) Time Limit for Service.** Within 60 days of the filing of the complaint, or within 180 days in actions seeking collection of a liquidated debt or recovery by a subrogee, the plaintiff must file either an acknowledgment of service or proof of service of the summons, the complaint and any order directed by the Court to the parties at the time of filing. The acknowledgment or proof shall be filed as to each defendant who has not responded to the complaint. Prior to the expiration of the foregoing time period, a motion may be made to extend the time for service. The motion must set forth in detail the efforts which have been made, and will be made in the future, to obtain service. The Court shall extend the period for such time as may be warranted by circumstances set forth in the motion. Failure to comply with the requirements of this Rule shall result in the dismissal without prejudice of the complaint. The Clerk shall enter the dismissal and shall serve notice thereof on all the parties entitled thereto. This subdivision does not apply service in a foreign country pursuant to subdivision (f) or (h)(2) of SCR Civil 4.

**Rule 5. Pleadings**

It shall not be necessary for any party in any cause in this branch to file any answer, plea, or other defense in writing except in case the defendant asserts a set-off or counterclaim. All pleadings shall be so construed as to do substantial justice.

**Rule 6. Jury Demand**

Any party to an action brought in this Branch may demand a trial by jury of any issue triable of right by a jury by filing a demand for such jury trial signed by the party or his attorney of record. The demand must be filed not later than the time for appearance of the defendant stated in the notice, or such extended time as the Court may allow for good cause shown, and must be accompanied by (1) the fee provided in SCR Civil 202, unless the Court has authorized the party to proceed without payment or repayment of costs and (2) a verified answer setting out the facts upon which the defense is based, if the jury demand is made by the defendant. If a trial by jury is properly demanded, the case will be referred to the Civil Division and scheduled for trial on an expedited basis.

## **Rule 7. Time of Sessions, Office Hours, and Trials**

**(a) Sessions.** The Small Claims and Conciliation Branch shall hold sessions every day except Sundays and legal holidays, commencing at 9:00 a.m., and shall also hold 1 evening session at 6:30 p.m. every Wednesday except that the evening session shall be conducted on the Thursday following any Wednesday which is a legal holiday.

**(b) Office Hours.** The office of the clerk of this branch shall be open for the transaction of business from 8:30 a.m. until 4:30 p.m. on weekdays, from 9:00 a.m. to 12:00 noon on Saturdays, and, on the day of any evening session, from 6:30 p.m. until the adjournment of the court or 8:00 p.m. whichever is later.

**(c) Trials.** All cases shall be set for trial at 9:00 a.m. on the appearance date specified in the notice, provided that any party may contact the Clerk of this Branch and request that the case be set down for trial by the Court at the 1st evening session following the date specified in the notice. Unless consented to by all other parties, such request shall be promptly presented to the presiding judge for disposition.

In any case in which the plaintiff is represented by an attorney, it shall be the duty of defendant's attorney, if any, to attempt promptly to contact the plaintiff's attorney by telephone if feasible, otherwise by letter, to confirm that the trial will take place on the date specified in the notice or to arrange for a different trial date by agreement.

The Clerk may continue any case once as a matter of course upon a showing that (a) defendant received notice of the trial less than 5 days before the date thereof, or (b) the parties have mutually agreed to a continuance. No continuance granted by the Clerk shall exceed 30 days. The Court may continue any case upon a showing of good cause therefor. When a continuance is ordered, the Clerk shall furnish the parties with a notice showing the day and hour to which such case has been continued.

**Rule 8. Certification to Civil Division**

With the approval of the Presiding Judge of the Civil Division, and when the interests of justice seem to require, the Court may certify any action brought in this Branch to the Civil Division of the Court for further proceedings in that Division. Any action so certified shall be subject in all respects to the Superior Court Rules of Civil Procedures.

## **Rule 9. Persons Appearing in a Representative Capacity**

**(a) In General.** Except as provided in sections (b) and (c) of this Rule, no person other than a member in good standing of the Bar of this Court shall be permitted to appear in this Branch in a representative capacity for any purpose other than securing a continuance.

**(b) Corporations.** No corporation shall appear as a plaintiff in this Branch except through a member in good standing of the Bar of this Court. Corporations may appear as defendants as provided in District of Columbia Court of Appeals Rule 49(c).

**(c) Law Students.** Any law student admitted to the limited practice of law pursuant to the Rules of the District of Columbia Court of Appeals may engage in the limited practice of law in the Small Claims and Conciliation Branch subject to the provisions of SCR Civil 101(e).

### COMMENT

District of Columbia Court of Appeals Rule 49(c)(6) (now (c)(11)) allows a corporation to appear in defense of a small claim action through an authorized officer, director or employee. The Rule directs that the non-lawyer file along with his or her appearance an affidavit of a corporate officer vesting in the representative the requisite authority to bind the corporation at time of settlement or trial, and the Rule requires that the corporation be represented by a lawyer if the corporation files a cross-claim or a counterclaim, if the matter is appealed or if the matter is certified to the Civil Division.

## **Rule 10. Discovery**

**(a) On Application of a Party.** For good cause shown, and with due regard for the expeditious and informal nature of the proceedings, the Court may authorize a party to proceed with discovery pursuant to SCR Civil 26 through 37. In addition to the protective orders provided for in SCR Civil 26(c), the Court may shorten the time within which a party is required to perform any act or make any response in connection with discovery. This Rule applies with equal force to all actions filed in the Small Claims and Conciliation Branch but subsequently certified to the Civil Division for trial scheduling pursuant to SCR SC 6.

**(b) On Initiative of the Court.** If any claim of any party is unliquidated, or if the interest of justice appears to require it, the court shall, in the course of the pretrial inquiries provided for in Small Claims Rule 12(a), elicit from the parties or their attorneys a statement as to the necessity for discovery proceedings in order to accomplish just and expeditious determination of the cause. Upon good cause appearing, he shall order or authorize such proceedings pursuant to Superior Court Rules of Civil Procedure 26-37 as the interests of justice seem to require, and shall continue the cause for such period of time as may seem reasonably necessary.

### **Rule 11. Preliminary Proceedings by the Clerk**

At the beginning of each session of the Court, the Clerk shall advise all persons present that, except for corporations, no party is required to have an attorney represent him but that any party is entitled to appear through counsel of his choice or may, if he qualifies for such appointment, request the judge to appoint an attorney or 3rd year law student to represent him. The Clerk shall then call the cases assigned for that session in order to determine which, if any, parties are absent. If the plaintiff is present and (1) neither the defendant nor anyone purporting to represent him is present, and (2) there is no question as to the validity of service upon the defendant, and (3) the plaintiff does not seek to recover attorneys' fees, the Clerk shall enter a judgment by default in favor of the plaintiff in the amount of any liquidated damages or enter a default subject to ex parte proof before the Court with respect to the amount of any unliquidated damages. In actions for property damage only, proof of unliquidated damages may be made by affidavit as provided in SCR Civ 55-II. If the 3 aforementioned conditions are met and plaintiff is present and seeks to vacate a stay of execution after notice of a hearing to set the stay aside, the Clerk shall vacate such stay except where defendant has been in default for less than 2 weeks. All other cases shall be presented to the Court for disposition.

## **Rule 12. Proceedings by the Court**

**(a) Calling the Calendar.** After the judicial officer takes the bench, the Clerk will call the cases assigned to the Court for disposition and the Court will inquire in each instance as to the nature of the claims and defenses and will take appropriate action with respect to any requests for appointment of counsel. In the course of these inquiries the Court shall make an earnest effort to help the parties settle their differences by conciliation and shall, if appropriate, elicit the information required by Small Claims Rule 10(b). If in any case the plaintiff shall fail to appear without prior notice to the Court, the action may be dismissed for want of prosecution, or a non-suit may be ordered, or defendant may proceed to trial on the merits, or the case may be continued or returned to the files for further proceedings on a later date, as the Court may direct. If both parties shall have failed to appear without prior notice to the Court, the Court may order the action dismissed without prejudice for want of prosecution, or make any other just and proper disposition thereof, as justice requires.

**(b) Conduct of the Trial.** Should the parties fail to settle the controversy, the court shall proceed with a trial on the merits of the case. The parties and witnesses shall be sworn. The judge 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 provisions or rules of practice, procedure, pleading or evidence, except such provisions relating to privileged communications.

### **Rule 13. Motions**

**(a) In General.** When any motion cognizable in this Branch is dependent upon facts not apparent upon the record, said motion shall be in writing and shall be accompanied by an affidavit or sworn testimony of the movant, his agent, or some other competent person setting out fully the facts upon which said motion is based. All citations to cases decided by the United States Court of Appeals for the District of Columbia Circuit shall include the volume number and page of both U.S.App.D.C. and the Federal Reporter. Parties not represented by counsel shall file all written motions in the Clerk's Office with necessary copies. The Clerk shall send notice of the motion to the opposing party, noting the date and method of service of such notice on the record. All parties represented by counsel shall serve all written motions in accordance with SCR Civ 5. Beneath the Certificate of Service, these same parties shall include on the original motion and each copy the following statement: "THIS MOTION HAS BEEN SET FOR HEARING IN SMALL CLAIMS COURT ON \_\_\_\_\_ AT \_\_\_\_\_," inserting therein a date and time set by the Clerk.

**(b) Summary Judgment.** Any party seeking to recover upon a claim or counterclaim may, at any time after the appearance date indicated in the summons, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof in accordance with SCR-Civil 56.

**Rule 13-1. Motions and Discovery in Cases Referred to the Civil Division**

A judge of the Civil Division to whom a case is referred for trial pursuant to SCR-SC 6 shall hear and determine all motions pending in the case as of the date of referral and all those filed after that date. Discovery in all such cases may be obtained only by leave of the Court.

**Rule 14. Fees**

Fees shall be in accordance with the schedule set out in Superior Court Rule of Civil Procedure 202.

## **Rule 15. Costs**

**(a) Award of Costs.** The award of costs shall be according to the discretion of the judge, who may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the suit incurred by either party. When process is served by the Marshal, or by registered or certified mail, the actual cost of service shall be taxable as costs. When served by an individual specially appointed by the Court, or approved by the Clerk, the cost of service, if any, shall not be taxable as costs. The Court may exercise its discretion in the awarding of costs in such manner as to discourage the filing of frivolous, vexatious or false claims or defenses and to prevent interference with the administration of justice in this Branch.

**(b) Failure to Pay Costs.** If any party shall fail to pay accrued costs, though able to do so, the judge of this Branch shall have power to deny said party the right to file any new case in this Branch while such costs remain unpaid and likewise to deny such litigant the right to proceed further in any case pending in this Branch.

## **Rule 16. Judgment**

**(a) Entry of Judgment.** Judgment shall be entered at the time the finding of the judge is entered.

**(b) New Trial.** Upon a satisfactory showing that a substantial question of law or fact, or both, is presented, the trial judge may in his discretion grant not more than 10 days in which to file a motion for new trial. Such motion may be disposed of by the Court without hearing or at a hearing held not later than 5 days after the filing of the motion. If the motion is granted, the Court shall set the case down for a new trial at the earliest practicable date.

**(c) Stay of Execution.** For good cause shown as provided in section (b) of this Rule or otherwise, the Court in its discretion may stay the execution of judgment upon such conditions for the security of the adverse party as are just and appropriate.

**(d) Surrender of Contracts.** When a judgment is based upon a negotiable or non-negotiable instrument, or other contract under seal, said instrument or contract shall stand merged in the judgment and the original thereof shall be surrendered to the Clerk and be marked "cancelled".

## **Rule 17. Installment Payment of Judgment**

**(a) Order of Installment Judgment.** When a judgment is ordered paid in installments, the Clerk shall furnish the judgment defendant by 1st class mail with a memorandum of the dates on which and the amounts in which such payments are to be made, with a warning to him that the stay of execution will be vacated upon any default on his part, without just excuse.

**(b) Default Upon Installment Judgment.** Upon a showing by the judgment plaintiff, his agent or attorney, that the defendant has failed to comply with such order, the case shall be set down for hearing, with reasonable notice by ordinary mail to the judgment defendant, to determine whether the stay of execution shall be vacated. When such stay is vacated, or when no stay is granted, the judgment plaintiff shall have the right to avail himself of all remedies otherwise available in the Civil Division of this Court for the enforcement of such judgment.

**Rule 18. Supplementary Proceedings in Wage Claims**

In all cases where the judgment is founded in whole or in part on a claim for wages or personal services, the judge shall, upon written or oral motion of the party obtaining judgment, order the appearance of the party against whom such judgment has been entered, but not more often than once each 4 weeks, for oral examination under oath as to his financial status and his ability to pay such judgment, and the judge shall make such supplementary orders as may seem just and proper to effectuate the payment of the judgment upon reasonable terms, provided, that the term "personal services" does not apply to a litigant whose claim is based upon professional services.

**Rule 19. Limitation of Allowance of Attorney's Fees**

No attorney's fees may be allowed as costs in an action in this Branch unless the plaintiff's attorney shall: (1) Exhibit to the judge the instrument or agreement upon which such claim is based; (2) certify in writing that the fee claimed is payable only and entirely to him, and that he has no agreement with the plaintiff and will make none whereby any part of such attorney's fees will be payable to anyone other than such attorney. Except for exceptional circumstances made known to the judge in open court, attorney's fees in this Branch may not be allowed in an amount exceeding 15 percent of the plaintiff's recovery.

## **SUPERIOR COURT RULES OF PROCEDURE FOR THE SMALL CLAIMS AND CONCILIATION BRANCH RULES FOR ARBITRATION**

### **Rule 1. Judge; Procedure; Fees**

The judge sitting in this Branch shall hold himself ready to serve as referee or arbitrator, either alone or in conjunction with other persons, as provided by law or rule. Procedure shall be as provided by D. C. Code § 11-1322, or upon written stipulation between the parties or their counsel. Fees shall be charged in accordance with Superior Court Rule of Civil Procedure 202. The court in its discretion may waive or reduce fees or require them to be deposited in advance in the registry of the Court.

**Rule 2. Consent**

All persons desiring an arbitration shall sign a consent which shall contain the name or names of the arbitrator or arbitrators, a brief recital of the nature of the controversy to be determined, and a statement that they will abide by these Rules and the arbitrator's award. The consent shall be filed with the Clerk of this Branch.

**Rule 3. Hearing**

The arbitrator or arbitrators shall forthwith fix a time to hear the controversy. He or they shall not be bound by the rules of evidence, but may receive such evidence as seems equitable and proper. Either or both parties may be represented by counsel. No expense shall be incurred by the arbitrators except upon the consent in writing of the parties.

**Rule 4. Withdrawal After First Hearing**

After the 1st hearing has commenced, neither party may withdraw from the arbitration unless both parties consent, or the arbitrator or arbitrators direct a discontinuance of the proceedings.

**Rule 5. Award**

The arbitrator or arbitrators shall make his or their award in writing and file the same forthwith, together with his or their opinion, if any, with the Clerk of this Branch, furnishing a copy thereof to each party, or his counsel.

**Rule 6. Recording of Award**

The Clerk shall record the award in the records of this Branch.

## **SUPERIOR COURT RULES OF PROCEDURE FOR THE SMALL CLAIMS AND CONCILIATION BRANCH RULES FOR CONCILIATION**

### **Rule 1. Availability of Conciliation**

The judge sitting in this Branch shall hold himself ready to conciliate the differences of the parties to any dispute or controversy, whether pending in a court or not, irrespective of the amount involved, and including actions or disputes concerning the recovery of the possession of real estate, arrears of rent, and recovery of personalty. Fees shall be charged in accordance with Superior Court Rule of Civil Procedure 202. The Court in its discretion may waive or reduce fees or require them to be deposited in advance in the registry of the Court.

## **Rule 2. Conciliation Upon Application of 1 Party**

- (a) Any person having a claim which in his opinion may be adjusted without resort to court action may apply to the judge of this Branch for the issuance of a notice of conciliation.
- (b) If it shall seem to the judge that such claim would lend itself to conciliation, he shall cause a notice to be sent by ordinary or certified mail to the adverse party at the address given by the applicant. At least 3 days notice shall be given, exclusive of the day of mailing.
- (c) The hearing shall be held in this Branch. Such a controversy shall be heard informally. The judge shall endeavor to effect an amicable and equitable adjustment between the parties. He shall not be bound by the rules of evidence and shall endeavor to search out the right of the matter and to guide the parties to an amicable and equitable settlement of the controversy. Either or both parties may be represented by counsel.
- (d) The Clerk of the Branch shall keep a record of the proceedings had in such conciliation case, and shall, at the direction of the judge, record in the records of this Branch, the amount or basis of conciliation decided upon under the agreement of the parties.

**Rule 3. Conciliation Where All Parties Appear Together Voluntarily**

(a) Parties appearing together voluntarily may submit their controversy to the judge of this Branch for conciliation without the issue of any notice.

(b) When such parties have appeared, and submitted their dispute for conciliation, the proceedings shall be governed by Rule 2, sections (c) and (d) of these Conciliation Rules.

#### **Rule 4. Conciliation of Cases Certified by a judge of the Superior Court**

**(a)** The judge sitting in this Branch shall accept on certification from any judge of the Superior Court any case referred to him for conciliation, or for the purposes of endeavoring to obtain a complete or partial agreed statement of facts or stipulation, which may or will simplify and expedite the ultimate trial of the case. He may, with the consent of all parties, complete the trial of such case in said Branch; without such consent, he shall recertify the case to another judge of the Court for trial.

**(b)** In so recertifying a case, he shall report whether the conciliation or pretrial proceeding has succeeded, and if so to what extent; and to what extent the issues have been narrowed or reduced; what facts have been conceded; what documents have been admitted; and what stipulations have been agreed upon by the parties or their counsel.