



Lynda M. Connolly
Chief Justice

Trial Court of the Commonwealth District Court Department

Administrative Office
Two Center Plaza (Suite 200)
Boston, MA 02108-1906
www.mass.gov/courts/districtcourt

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MEMORANDUM

TO: District Court Judges and Clerk-Magistrates
FROM: Hon. Lynda M. Connolly, Chief Justice
DATE: September 11, 2009
SUBJECT: **Small claims changes effective October 1, 2009**

The Supreme Judicial Court has promulgated important amendments to Trial Court Rule III, the Uniform Small Claims Rules, to be effective October 1, 2009, in the Boston Municipal, District and Housing Court Departments.

In large part these amendments implement the recommendations of our Small Claims Working Group, whose 2007 report is available at <http://www.lawlib.state.ma.us/docs/smallclaimreport.pdf> on the internet and at <http://trialcourtweb.jud.state.ma.us/smallclaimreport.pdf> on the Trial Court intranet. The changes also reflect a great deal of input from the Association of Clerk-Magistrates and Assistant Clerks and from individual clerks and assistant clerks, as well as suggestions received during the public comment period from interested attorneys, consumer advocates, and citizens. The regional seminars on small claims and debt collection conducted throughout the District Court in 2006 also produced many excellent suggestions on best practices and improvements to the small claims process from our magistrates, who resolve more than 120,000 small claims each year.

The amendments apply to all small claims cases, but four changes in particular should have a significant impact on debt collection cases: better defendant addresses, more detailed claims, increased scrutiny of default judgment requests, and better recording when judgments are paid.

The Working Group's detailed discussions and the many suggestions we received have made it possible to structure these changes in a way that will achieve their important goals while imposing very few added burdens on our understaffed clerks' offices. Special thanks are due Deputy General Counsel Ellen Shapiro of this office, who coordinated the work of the Small Claims Working Group and has shepherded the entire comment and implementation process.

A few of these amendments govern filing requirements and therefore apply only to small claims filed on or after October 1, 2009 – namely, the amendments to Rules 2 and 7(d)(8) that require that the plaintiff's "Statement of Small Claim" include some additional information and that some plaintiffs must file a new "Verification of Defendant's Address" form along with their claim. (These are described below.) The rest of these amendments apply both to already-filed and new small claims.

This memorandum offers an overview of the amendments and introduces several new forms for implementing them. As you know, it will be supplemented with regional training sessions for clerk-magistrates and assistant clerks in Worcester (Sept. 15), Medford (Sept. 16), Plymouth (Sept. 23) and Springfield (Sept. 24) at which we look forward to hearing your comments and questions. Your hard work is what makes this “just, speedy and inexpensive” mechanism for resolving relatively small civil disputes successful, and I look forward to a smooth transition to the revised rules.

Included with this memo are:

- a one-page chart summarizing the amendments to the rules
- a one-page checklist for entering default judgments
- a redlined version of the rules and commentary, highlighting the changes
- five new forms which will be used in implementing the new changes:
 - “VERIFICATION OF DEFENDANT’S ADDRESS” (Rule 2[b])
 - “AGREEMENT FOR JUDGMENT AND FOR PAYMENT ORDER” (Rule 7[a])
 - “APPEARANCE OF SUBSTITUTE COUNSEL” (Rule 7[e])
 - “SATISFACTION OF JUDGMENT” (Rule 9[e])
 - “SATISFACTION OF JUDGMENT ON COUNTERCLAIM” (Rule 9[e])
- revised instructions for the back of the “STATEMENT OF SMALL CLAIM AND NOTICE OF TRIAL” (DC-SC-1) form, which will be introduced when the form is next reprinted.

The redlined version of the amended rules and commentary is also available on the internet at <http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/uniform-small-claims-rules-redlined.pdf> and the intranet at <http://trialcourtweb/courtsandjudges/courts/districtcourt/uniform-small-claims-rules-redlined.pdf>.

The text of the rules and commentary without redlining is available on the internet at <http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/uniform-small-claims-rules.pdf> and the intranet at <http://trialcourtweb/courtsandjudges/courts/districtcourt/uniform-small-claims-rules.pdf>.

All five new forms and the revised instructions are also available on the internet at <http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/small-claims-forms.pdf> and the intranet at <http://trialcourtweb/courtsandjudges/courts/districtcourt/small-claims-forms.pdf>. The forms may also be obtained individually from the “Forms” area of the District Court internet site at <http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/forms.html> and our intranet site at <http://trialcourtweb/courtsandjudges/courts/districtcourt/formsfordownload.html>.

WHAT HAS CHANGED?

1. **Business plaintiffs must verify the defendant's address prior to filing** (Rule 2[b]).

Before filing a small claim that arises out of the plaintiff's trade or commerce or involves an assigned debt, plaintiffs must now verify the defendant's current mailing address in one of the permissible ways indicated on the new "VERIFICATION OF DEFENDANT'S ADDRESS" form. They must then file that form, certifying that they have done so, along with their "Statement of Small Claim."

Requiring business plaintiffs to verify the defendant's current mailing address will reduce concerns that some defendants never receive notice of a small claim pending against them because the notice was mailed to an outdated address. Since this problem is largely confined to debt collection cases, this requirement does not apply to consumer plaintiffs.

- This requirement applies *only* to plaintiffs who are pursuing a claim that derives from their trade or commerce or involves an assigned debt. The rules adopt the definition of "trade" and "commerce" in G.L. c. 93A, § 1, and case law has interpreted that to include commercial relationships between sellers and consumers in a business context, but not isolated private commercial transactions. "Assigned debt" is defined in Rule 1 in a way that includes general assignments of claims or judgments, as well as assignments for collection only.
- The plaintiff need not serve the "VERIFICATION OF DEFENDANT'S ADDRESS" form on the defendant.
- The clerk's office is not required to check for compliance at the time of filing.
- If the plaintiff later requests a default judgment and has not complied with this requirement, "the court shall not enter a default judgment for the plaintiff, and shall dismiss the claim without prejudice" (Rule 7[d][8]). It appears that a magistrate has discretion whether to permit late compliance with this requirement, but only if the form properly verifies the same address to which the defendant's copy of the "Statement of Small Claim" was mailed.
- The new "VERIFICATION OF DEFENDANT'S ADDRESS" form is attached.

2. **Business plaintiffs must include in their claim the original creditor's name, the last four digits of the original account number, and the amount and date of last payment.** (Rule 2[b]).

Rule 2(b) creates an additional new requirement that applies *only* to plaintiffs with claims that arise from their trade or commerce or involve an assigned debt. Such plaintiffs must additionally include in their "Statement of Small Claim" the original creditor's name (if it differs from the plaintiff's), only the last four digits of the original account number, and the amount and date of the last payment, if any. This additional information reduces the likelihood that the defendant may fail to

recognize the claim because it has been assigned to someone with a different name, or confuse it with other accounts with the same creditor.

- This requirement applies *only* to plaintiffs with claims that derive from their trade or commerce or involve an assigned debt.
- The clerk's office is not required to check for compliance at the time of filing.
- If the plaintiff later requests a default judgment and has not complied with this requirement, "the court shall not enter a default judgment for the plaintiff, and shall dismiss the claim without prejudice" (Rule 7[d][8]). The magistrate has no discretion to excuse noncompliance.

3. All plaintiffs must include in their claim a breakdown of the total amount sought, identifying any amounts sought for damages, for statutorily-authorized multiple damages or penalties, for attorney's fees, or for costs (Rule 2[a]).

All plaintiffs must state specifically in their "Statement of Small Claim" any amounts sought for damages, for statutorily-authorized multiple damages or penalties, for attorney's fees or for costs, as well as the total amount being sought. This gives the defendant a breakdown of the amount being claimed and assists the court in determining the proper amount of any award. District/Mun. Cts. Supp. R. Civ. P. 106(B) already has a similar requirement for regular civil cases.

- The clerk's office is not required to check for compliance at the time of filing.
- If the plaintiff later requests a default judgment but has failed to provide the breakdown of the claim required by Rule 2(a), the magistrate has discretion:
 - whether to require the plaintiff to provide such a breakdown so that the magistrate can apply the default judgment checklist found in Rule 7(d), or
 - whether to limit any default judgment to single damages, or
 - whether to deny a default judgment entirely.

4. The court may accept a written agreement for judgment or for a payment order *only* on the official court form. If the parties are present, the magistrate must ask the defendant if he or she is able to pay the payment order and understands the consequences of not complying (Rule 7[a]).

Any written agreement for judgment or a payment order may be accepted for filing, or entered as the court's judgment and payment order, only if it is submitted on the official "AGREEMENT FOR JUDGMENT AND FOR PAYMENT ORDER" form. The second page of the form lists income sources that are exempt by law and also provides a worksheet on which the defendant may calculate the exempt portion of his or her wages or retirement payments. The form includes a certification by the parties that "*This*

payment order will not be satisfied with any exempt income listed on pg. 2 of this form.”

- 15 U.S.C. § 1673(c) and G.L. c. 224, § 16 (made applicable to small claims by G.L. c. 218, § 22), prohibit the court from ordering a defendant to make any payment from exempt income. The information and certification included in the official form protects the court from unwittingly ordering or endorsing any payment agreement that relies on exempt income.
- If the parties present the magistrate with a proposed payment agreement *orally* in open court, the magistrate should either request that it be reduced to writing on the official court form, or question the defendant to confirm that the agreement does not rely on exempt income.
- Court personnel should not become involved in brokering or otherwise encouraging any payment agreement that relies on exempt income, even if it is not entered as a court order.
- Note that the rule obligates the clerk’s office to refuse to accept for filing any written agreement for judgment or payment order that is not submitted on the official form, whether submitted in person or received by mail.
- When the court accepts a proposed agreement, the court should always enter a judgment and payment order implementing that agreement, since such agreements are not themselves enforceable. Unlike Mass. R. Civ. P. 58(a), the small claims rules do not provide that an agreement for judgment, upon filing, is itself an enforceable judgment.
- The official “AGREEMENT FOR JUDGMENT AND FOR PAYMENT ORDER” form is attached and must be used without modification.

5. Attorneys may cover for another attorney only after filing a limited appearance as substitute counsel (Rule 7[e]).

The small claims rules now formally recognize the common practice of an attorney “covering” for another attorney, but permit this to be done only by filing a written appearance as substitute counsel.

- This permits substitute counsel to file an appearance that is “time-limited” (e.g., “solely for that day’s proceedings”), but *not* to limit their scope of representation (e.g., solely to answering the list).
- All notices will continue to be sent to counsel of record, not to substitute counsel.
- In Civil BasCOT, clerk’s offices should *not* add a substitute counsel as the attorney of record by entering the attorney’s BBO number on the PARTIES tab. Instead, they should simply docket the filing of the attorney’s written appearance as substitute counsel. The following docket code should be used when substitute counsel appears for a single plaintiff:

ASCP Appearance as substitute counsel for plaintiff for this date only filed by [Attorney], Esq. (Uniform Small Claims Rule 7(e)).

The following variant may be used if substitute counsel appears for multiple plaintiffs or for a defendant:

ASC Appearance as substitute counsel for [Party(ies)] for this date only filed by [Attorney], Esq. (Uniform Small Claims Rule 7(e)).

- Since an appearance as substitute counsel results from an agreement between two attorneys, it does not constitute “limited assistance representation,” which involves an attorney providing limited representation for an otherwise unrepresented party. (The Supreme Judicial Court has authorized Trial Court departments to permit such representation after May 1, 2009.)
- A suggested “APPEARANCE OF SUBSTITUTE COUNSEL” form is attached. However, any written notice of appearance is sufficient if it indicates that the attorney is appearing in a specific case for a specific period as substitute counsel for counsel of record.

6. Magistrates now have a checklist of the requirements for entering a default judgment (Rule 7[d]).

The rules set out for magistrates a checklist of the nine legal requirements that must be met before entering a default judgment against a defendant. This list will help magistrates determine whether legal liability exists, calculate the amount of any award correctly, and prevent misuse of the small claims court when the defendant does not appear.

Included with this memorandum is a one-page summary of that checklist (with examples).

- Although their codification is new, eight of the nine factors are already obligatory under existing law for default judgments. The only *new* requirement is found in Rule 2 – i.e., the “Statement of Small Claim” must include a breakdown of the monetary claim and (if the claim derives from the plaintiff’s trade or commerce or is assigned debt) must include the specified information about the original debt and be accompanied by the new “VERIFICATION OF DEFENDANT’S ADDRESS” form.
- Several of the nine factors involve checking that a specific requirement is met, and this may be delegated to appropriately trained support staff who assist the magistrate in the small claims session. Some factors, however, require a magistrate’s legal determination or exercise of discretion and these may not be delegated.

7. If the plaintiff is not prepared to go to trial and a continuance is not warranted, the defendant is entitled to a default judgment rather than a dismissal (Rule 7[c]).

Rule 7(c) requires that a judgment for the defendant (rather than a dismissal) must be entered if the defendant is present for the scheduled trial, the plaintiff does not appear or is not prepared to proceed to trial, and there is no good cause for a continuance. Rule 7(b) provides that the defendant's appearing ready for trial is not itself good cause to grant the plaintiff a continuance.

- This is consistent with the parallel practice that a default judgment for the plaintiff is normally granted when the defendant fails to appear. Either party may of course later request relief from judgment under Rule 8 if their failure to appear was for good cause.

8. The clerk's office may issue an Execution only after the initial payment hearing (Rule 7[k]).

General Laws c. 235, § 16 does not permit the court to issue a Writ of Execution until any appeal period has expired. Rule 7(k) now further delays the issuance of any small claims Execution until after the initial payment hearing which must be scheduled "thirty days from the date of judgment or shortly thereafter" unless waived (Rule 7[i]). In the exceptional situation where no payment hearing is scheduled, the Execution may not issue until 30 days after entry of judgment, when the usual 30-day payment order will have expired.

- In the past, defendants have sometimes found that, notwithstanding the 30-day payment order and the scheduled payment hearing, the plaintiff has levied on the judgment prior to that hearing, often by having an officer seize the defendant's automobile.

9. Relief from judgment for lack of notice is not limited to one year (Rule 8).

The rule now provides that the a defendant may at anytime obtain relief from judgment based on actual lack of notice of the claim.

- This reflects due process requirements from decisions such as *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80 (1988), and *Bowers v. Board of Appeals of Marshfield*, 16 Mass. App. Ct. 29, 31 (1983), and found in Mass. R. Civ. P. 60(b)(4).
- The one-year limitation in Rule 8 continues to apply to motions for relief from judgment on any other grounds.

10. The plaintiff may request that a small claim be transferred to another court if the defendant moves after the claim is filed, whether before or after judgment (Rule 9[d]).

- Formerly the rule permitted transfer only when the defendant moved *after* judgment.
- Note that the rule authorizes transfer to another court *only* if the defendant has moved.

11. Plaintiffs must notify the court in writing within 10 days after a small claims judgment is paid in full. If the plaintiff refuses to do so, the defendant may ask the court to determine that the judgment has been paid in full (Rule 9[e] & [f]).

- The docketing of such notices of satisfaction should largely alleviate the difficulty that consumer defendants sometimes later experience in proving that adverse small claims judgments in their credit reports were paid in full.
- Suggested forms are attached that may be used to file a “SATISFACTION OF JUDGMENT” or a “SATISFACTION OF JUDGMENT ON COUNTERCLAIM.” However, any written statement (including a letter) signed by the plaintiff or the plaintiff’s attorney that acknowledges that the judgment is paid in full is sufficient.
- If the defendant files an affidavit, with supporting documentation, that he or she has paid a small claims judgment in full but the plaintiff refuses to file a notice of satisfaction (or the plaintiff’s address is unknown), a magistrate or judge may determine that the judgment has been paid in full and direct that such determination be entered on the docket.

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The following docket entries have been added to Civil BasCOT to implement these changes in small claims practice:

VDA	Verification of Defendant’s Address form filed (Uniform Small Claims Rule 2(b)).
AFJNOF	Agreement for judgment not submitted on official form and therefore returned to plaintiff for resubmission on official form before [Date] or claim will be dismissed (Uniform Small Claims Rule 7(a)).
ASCP	Appearance as substitute counsel for plaintiff for this date only filed by [Attorney], Esq. (Uniform Small Claims Rule 7(e)).
ASC	Appearance as substitute counsel for [Party] for this date only filed by [Attorney], Esq. (Uniform Small Claims Rule 7(e)).
NSJ	Notice of satisfaction of judgment filed (Uniform Small Claims Rule 9(e)).
NSJC	Notice of satisfaction of judgment on counterclaim filed (Uniform Small Claims Rule 9(e)).
DPF	After hearing, defendant has been determined to have paid in full the judgment of this court entered on [Date] against the defendant ([Judge/Magistrate]) (Uniform Small Claims Rule 9(f)).

AMENDMENTS TO THE UNIFORM SMALL CLAIMS RULES (effective October 1, 2009)

	<i>Rule</i>	<i>Changes affecting the parties</i>	<i>Changes affecting the magistrate or the clerk's office</i>
1	2(b) & 7(d)(8)	<p>“Verification of Defendant’s Address” form If plaintiff is <i>in trade or commerce or collecting assigned debt</i>, must verify defendant’s address and file form along with claim (need not be served on defendant).</p>	If plaintiff is <i>in trade or commerce or collecting assigned debt</i> , must check that form was filed before issuing default judgment for plaintiff.
2	2(b) & 7(d)(8)	<p>“Statement of Small Claim” form If plaintiff is <i>in trade or commerce or collecting assigned debt</i>, must also include original creditor’s name (if different), only last four digits of original account number, and amount & date of last payment.</p>	If plaintiff is <i>in trade or commerce or collecting assigned debt</i> , non-compliance requires denial of default judgment and dismissal without prejudice if defendant does not appear.
3	2(a)	<p>“Statement of Small Claim” form <i>All plaintiffs</i> must state specifically: damages, multiple damages, statutory penalties, attorney fees, costs, and total amount.</p>	If defendant does not appear, non-compliance may influence magistrate’s discretionary decision whether to grant a default judgment
4	7(a)	<p>“Agreement for Judgment and for Payment Order” form Parties may submit written proposed settlements <i>only</i> on official “Agreement for Judgment and for Payment Order” form.</p>	<ul style="list-style-type: none"> • May accept for filing written proposed settlements <i>only</i> on official form. • If parties present, magistrate must ask defendant whether (1) able to pay and (2) understands consequences of not paying.
5	7(e)	<p>Appearance of substitute counsel Attorneys may cover for counsel of record only by filing a written appearance as substitute counsel.</p>	<ul style="list-style-type: none"> • Must require attorney covering for counsel of record to file written appearance as substitute counsel. • All notices continue to be sent to counsel of record.
6	7(d)		<p>Checklist for entering default judgment for plaintiff Magistrate must review claim against checklist in Rule 7(d) before issuing default judgment for plaintiff.</p>
7	7(c) 7(b)		<p>Defendant entitled to judgment if plaintiff not ready for trial</p> <ul style="list-style-type: none"> • If plaintiff does not appear or is not ready to go forward, must enter judgment for defendant if no good cause for continuance • Defendant appearing ready for trial not itself good cause to continue.
8	7(k)		<p>Execution may issue only after initial payment review (if no payment review scheduled, 30 days after judgment).</p>
9	8	<p>Motions for relief from judgment for lack of actual notice of claim are not subject to the one-year limit.</p>	Docket, file, hear and determine.
10	9(d)	<p>When defendant moves post-filing, whether pre- or post-judgment, plaintiff may request magistrate to transfer to other court.</p>	Docket, file, hear and determine.
11	9(e) 9(f)	<p>Notice of satisfaction</p> <ul style="list-style-type: none"> • must be filed by creditor within 10 days after full satisfaction of judgment • otherwise debtor may request magistrate to rule that judgment was fully satisfied. 	<ul style="list-style-type: none"> • Docket and file. • Docket, file, hear and determine.
12	4(a)	<p>Motions for transfer to regular civil docket must be made prior to trial date.</p>	Do not entertain such motions made on trial date.

SMALL CLAIMS DEFAULT JUDGMENT CHECKLIST

1. Was the Statement of Small Claim *properly served* on the defendant?

- First-class mail service is sufficient if not returned undelivered (Rule 3[a]).
- Service on an *out-of-state defendant* requires a return receipt or other long-arm service (G.L. c. 223A, § 6).
- *Improper venue* is waived if not objected-to; if objected-to, may transfer to proper court (G.L. c. 218, § 21).

2. Is the plaintiff *in trade or commerce* or collecting an *assigned debt*? If so:

- You must confirm that the plaintiff filed the VERIFICATION OF DEFENDANT'S ADDRESS form verifying the defendant's address (Rule 2[b]). If the plaintiff failed to do so:
 - you must dismiss the claim without prejudice, or
 - in your discretion, you may permit late filing of the form if it properly verifies the address to which the Statement of Small Claim was mailed.
- The Statement must also include the *original creditor's name* (if different), the last four digits of the *original account number*, and the amount and date of *last payment* (Rule 2[a]), or you must dismiss the claim without prejudice.

3. Is the *military affidavit* completed and signed?

- *If the defendant is on active military duty*, you must follow the requirements of the Servicemembers Relief Act.
- *If you cannot determine whether the defendant is on active military duty*, you may either deny a default judgment or consider conditions to protect the defendant's rights if on active military duty (Rule 7[d][7]).

4. Does the court have *subject matter jurisdiction* to hear the claim? E.g.,

- No:
- *Mass. Tort Claims Act* negligence claims against a state or local agency or employee (G.L. c. 258)
 - *slander or libel* claims (G.L. c. 218, § 21)
 - *equitable relief without a money claim* (G.L. c. 218, § 21)
 - *invasion of privacy* (G.L. c. 214, § 1B)
- Yes:
- *road defects* (G.L. c. 84, §§ 15-21 or c. 81, § 18)
 - *medical malpractice* (but must refer for a tribunal)
 - *equitable replevin* of personal property along with a money claim (c. 214, § 3[1])

5. Do the facts alleged, if true, *constitute a recognized claim* on which relief may be granted? (e.g., a recognized contract, tort or warranty claim, statutory action, etc.)

6. Do the facts alleged, if true, *establish each element* of a recognized claim? E.g.,

- *consumer protection* claims (G.L. c. 93A, § 9) require a prior demand letter.
- *road defects* claims (G.L. c. 84, § 15-21 or c. 81, § 18) require a timely demand letter.
- *deficiency judgments for secured consumer goods* after repossession require an affidavit filed with the claim (G.L. c. 255, § 13I[d]).
- If not, you must require the plaintiff to establish the missing elements.
- The plaintiff need not prove any element that is established by the facts alleged, taken as true.

7. Is an *assessment of damages* required?

- If the claim is not for a sum certain, you must make an assessment of damages.
- The claim must state separately the amounts sought for damages, multiple damages, statutory penalties, attorney fees, costs, and total amount (Rule 2[a]). If the defendant does not appear, the plaintiff's failure to do so may influence your discretionary decision whether to enter a default judgment.

8. Does the claim include *any amounts that are discretionary*?

- e.g., multiple damages, a statutory penalty, discretionarily-set attorney's fees, or court costs other than the filing fee
- If so, you must exercise your discretion to set the amount.

9. Does the claim include *any amounts that must be reasonable by law*?

- e.g., contractual attorney's fees, collection costs, etc.
- If so, you must review that they are reasonable and not excessive.
 - e.g., *deficiency judgments for secured consumer goods* may not include finance charges for installments due after repossession (G.L. c. 255, § 13I[d]).

**Trial Court Rule III
UNIFORM SMALL CLAIMS RULES
(as amended effective October 1, 2009)**

(additions are underscored; deletions are ~~struck through~~)

**Rule 1
SCOPE AND APPLICABILITY OF RULES;
DEFINITIONS**

Pursuant to G.L. c. 218, §§ 21-25, these rules govern procedures in all small claims actions in the Trial Court of the Commonwealth. They shall be construed and applied to secure the just, speedy and inexpensive determination of every small claim action. Other civil rules of court shall not be applicable in small claims actions. ~~The court may, in an individual case prescribe notice requirements at variance with those prescribed in these rules where fairness requires.~~

As used herein, ~~the masculine shall include the feminine, and the singular shall include the plural.~~

In these rules, the following terms shall have the following meanings:

“Clerk” shall mean the Clerk-Magistrate of the division or a person assigned by him or her to perform the required function.

“Court” shall mean the magistrate or judge presiding over the hearing of a small claim action.

“Magistrate” shall mean a clerk-magistrate or assistant clerk-magistrate authorized by G.L. c. 218, §§ 21-23 to hear and determine small claims actions.

“Trade” and “commerce” shall have the same meaning as in G.L. c. 93A, § 1, but shall not include the lease or rental of residential property that is the plaintiff’s primary residence and that consists of three units or less, provided the plaintiff does not own, manage or have other involvement in the lease or rental of other residential property.

“Assigned debt” shall mean a claim or judgment where the right to collect the debt has been assigned by the creditor to another person or entity.

“Plaintiff” in Rules 7 through 10, shall include a defendant with respect to any counterclaim or any claim against a third party brought by him or her, and the word “defendant” shall include a plaintiff or a third party with respect to any counterclaim or any third-party claim brought against him or her.

“He” or “she” shall include any entity that may sue or be sued.

The Chief Justice for Administration and Management shall promulgate ~~forms to be used in small claims actions~~ the Statement of Small Claim form, the Verification of Defendant's Address form, and the Agreement for Judgment form provided for in these rules.

Commentary to 2009 Amendments

The authority formerly granted by Rule 1 to vary the notice requirements of these rules has been deleted because of the addition of mandatory address verification requirements in Rule 2(b). The court continues to have authority under Rule 3(a) to vary the manner in which notice is served. The definitions of "trade" and "commerce" and of "assigned debt" were added to implement the new address verification and pleading requirements of Rule 2(b). The definitions of "trade" and "commerce" refer to the Consumer Protection Act, G.L. c. 93A, but contain an exclusion for rentals of landlord-occupied multiple dwellings of three units or less. Case law further defining trade or commerce in the context of c. 93A cases is intended to be applicable here.

Commentary to 2001 Amendments

Most of these amendments are proposed to conform the Uniform Small Claims Rules to the statutory changes enacted by St. 1992, c. 379. The reasons for other proposed changes are noted under each rule.

The former second paragraph of Rule 1 has been rendered unnecessary by the passage of time since the 1983 promulgation of the Uniform Small Claims Rules.

The newly-added definition of "magistrate" reflects the statutory change contained in St. 1992, c. 379 and intends that small claims matters generally be heard in the first instance by a clerk-magistrate or an assistant clerk-magistrate. No magistrate who is not qualified by education or training should preside over small claims since these matters are to be determined "according to the rules of substantive law." G.L. c. 218, §21. The Trial Court will provide training pursuant to criteria approved by the Chief Justice for Administration and Management.

The newly-added definitions of "plaintiff" and "defendant" reflect the holdings of *Most v. Fitzgerald*, 417 Mass. 1001 (1994), and *Bischof v. Kern*, 33 Mass. App. Ct. 45 (1992), that small claims plaintiffs may appeal from an adverse decision on a counterclaim brought by the defendant. The addition of these definitions permits simple, consistent use of the terms "plaintiff" and "defendant" throughout these rules.

Rule 2 FILING A STATEMENT OF CLAIM

(a) Statement of Claim. Each small claim action shall be begun on a Statement of Small Claim ~~and Notice of Trial~~ form. The claim shall be stated in concise, untechnical language, but with particularity and comprehensiveness. A statement shall not be insufficient merely because the plaintiff has failed to allege all the elements of a prima facie case. The plaintiff shall state specifically any amounts sought for damages, for multiple damages or statutory penalties, for attorney's fees, and for costs, as well as the total amount being sought, exclusive of any prejudgment interest being sought from the court pursuant to G.L. c. 231, §§ 6B or 6C. If requested by the plaintiff or if

otherwise feasible and appropriate to facilitate the filing of a legible and complete claim that conforms to the requirements of this rule, the clerk shall provide assistance to the plaintiff in completing the form. The clerk shall provide necessary and helpful procedural information to small claim litigants if requested.

(b) Additional Requirements for plaintiffs in trade or commerce or pursuing assigned debt. Any plaintiff pursuing a claim incurred in the course of plaintiff's trade or commerce, or pursuing a claim for assigned debt, shall file along with the Statement of Small Claim form the Verification of Defendant's Address form, certifying that he or she has verified the defendant's mailing address in the manner set forth therein. The form need not be served on the defendant.

Any such plaintiff shall include the following information in the description of claim in the Statement of Small Claim form when the claim is filed with the court:

- (1) The name of the original creditor (if different from plaintiff's);
- (2) The last four digits of the account number assigned by the original creditor, if any; and
- (3) The amount and date of the defendant's last payment, if any.

If the plaintiff fails to comply with this section and the defendant does not appear at the scheduled trial, no default judgment shall be entered for the plaintiff and the claim shall be dismissed without prejudice.

(c) Filing with the Clerk. A claim may be filed in person or by mail. In either case, except where waived by the clerk of the court under the Indigent Court Costs Law (G.L. c. 261, §§ 27A-29), the claim shall be accompanied by the entry fee required by G.L. c. 218, § 22 and the surcharge required by G.L. c. 262, § 4C. The clerk shall provide a copy of the Statement of Small Claim and Notice form to the plaintiff upon filing as soon as is practicable, which copy shall show the date and time of trial. The date the Statement of Small Claim and Notice form is filed received by the clerk shall constitute the date of commencement of the claim.

Commentary to 2009 Amendments

Section (a) has been amended to require the plaintiff to state specifically any amounts sought for damages, for multiple damages or statutory penalties, for attorney's fees, and for costs, as well as the total amount sought, exclusive of any statutory prejudgment interest. This provides the defendant with a breakdown of the amount being claimed and assists the court in determining the amount of any award. It does not limit the amount of the court's award except for default judgments. Such a breakdown of the elements of the plaintiff's claim is already required in regular civil cases by Dist./Mun. Cts. Supp. R. Civ. P. 106(B).

Section (b) introduces two additional requirements for plaintiffs in trade or commerce or pursuing assigned debt. Such plaintiffs must verify the defendant's current address in one of several specified ways and certify this when filing the Statement of Small Claim. This enhanced filing requirement is intended to increase the likelihood that the defendant will receive notice of the claim when it is mailed.

Such plaintiffs must also provide three items of basic information which will help the defendant to identify the debt that is the basis of the claim. Such information may be particularly important when the plaintiff is an assignee rather than the original creditor. For privacy reasons, only the last four digits of the original creditor's account number are to be given.

If the defendant fails to appear for trial, the plaintiff's failure to comply with this section will result in denial of a default judgment and in dismissal of the claim without prejudice.

Commentary to 2001 Amendments

The change in the first paragraph is intended to encourage court personnel to provide procedural information and to assist claimants in the preparation of forms.

**Rule 3
NOTICE TO DEFENDANT; ANSWER TO CLAIM**

(a) **Notice.** The clerk shall promptly send to the defendant by first class mail, at the address or addresses supplied by the plaintiff, a copy of the Statement of Small Claim and Notice form. Such first class mail notice shall be sufficient, provided that it is not returned to the court undelivered. Service on out-of-state defendants shall be made pursuant to the provisions of G.L. c. 223A. The court may provide for any other means of service in individual cases as is deemed necessary.

(b) **Answer.** The Statement of Small Claim form shall instruct the defendant ~~shall be instructed~~ that he or she may, if he or she wishes, submit a written answer to the claim in the form of a letter to the court, with a copy mailed to the plaintiff, signed by the defendant and setting out in clear and simple language the reason(s) why the plaintiff should not prevail. The answer should state fully and specifically what parts of the claim are contested. However, the filing of an answer is optional, and the failure to file an answer ~~will~~ shall not result in the defendant's default. If the defendant's failure to submit a written answer, or to send a copy of it to the plaintiff in a timely manner, has prejudiced the presentation of the plaintiff's case, the court shall grant a continuance at the plaintiff's request.

(c) **Defendant's Counterclaim.** In the answer, or in a separate writing filed with the court, the defendant may set forth any claim which he or she has against the plaintiff within the jurisdiction of the court in small claims cases, without incurring any filing fee or surcharge. Both the plaintiff's claim and the defendant's claim shall be deemed one case if the defendant mails notice of his claim to the plaintiff at least ten days in advance of the scheduled trial date. The court may also permit the defendant to bring such a claim in writing at any time. Such claims shall not be compulsory. No written answer to the defendant's claim is required. If the defendant's presentation of a counterclaim, or failure to send timely notice to the plaintiff, has prejudiced the presentation of the plaintiff's case, the court shall grant a continuance at the plaintiff's request.

(d) **Third-Party Practice.** The defendant may bring a claim against any third party who may be liable to him or her for all or part of the plaintiff's claim if the defendant's claim is within the jurisdiction of the court in small claims cases and notice is mailed to the third party in the manner provided in Rule 2 at least ten days in advance of the scheduled trial date. The court may also permit the defendant to bring such a claim in writing at any time. There shall be no filing fee or surcharge for such a claim. When a counterclaim is asserted against the plaintiff, he or she may bring a claim against a third party in the same manner.

Commentary to 2004 Amendments

The change to paragraph (a) reflects the amendment of G.L. c. 218, § 22 by St. 2004, c. 149, § 199. This amendment abolishes the earlier statutory requirement of notice by registered mail. Notice by first class mail is now sufficient.

Commentary to 2001 Amendments

The change to paragraph (a) codifies the holding of *Schreiber v. Hoyusgaard*, 1989 Mass. App. Div. 138 (S. Dist.), that in the case of an out-of-state defendant the service provisions of the long-arm statute (G.L. c. 223A, § 6) prevail over those in this rule. The practical significance of this change is that mail service on an out-of-state defendant is valid only if there is a signed receipt for the certified mail.

The procedure embodied in the proposed amendment to paragraph (b) would give plaintiffs a guarantee of protection from surprise defenses, but it would not require an answer to be filed in all cases. The amendment to paragraph (c) would also protect plaintiffs from surprise.

Rule 4 TRANSFER

(a) **To Regular Civil Docket.** The court may, upon request of a party or upon its own motion, transfer a claim or counterclaim begun under the small claims procedure to the regular civil docket pursuant to G.L. c. 218, § 24. Any such request shall be made prior to the date when trial is scheduled before a magistrate with notice to the other party. If the court orders such a transfer: (i) the claim shall be entered on the court's regular docket for hearing and determination as though it had been begun under the Massachusetts Rules of Civil Procedure, but no entry fee shall be charged upon such transfer; (ii) the defendant shall serve and file an answer to the plaintiff's claim within twenty days of the date of such transfer, if the defendant has not already done so in the small claims action; (iii) in the order of transfer or thereafter the court may direct any party to file specific additional or substitute pleadings pursuant to the Massachusetts Rules of Civil Procedure; and, (iv) the court may impose any terms upon the transfer as the interests of justice may require.

(b) **To Housing Court under c. 185C.** Any small claims action within the jurisdiction of the Housing Court Department may be transferred to the Housing Court Department pursuant to G.L. c. 185C, § 20 by filing a notice of removal with the clerk of

the division where such action is pending, and serving a copy thereof on the other parties. The clerk shall thereupon transfer such action to the Housing Court Department, where it shall be entered on the regular small claims docket. Thereafter, the court may, upon request of a party or upon its own motion, transfer a claim or counterclaim to the regular civil docket pursuant to G.L. c. 218, § 24, but no entry fee shall be charged upon such transfer.

(c) To Medical Malpractice Tribunal. Prior to trial by a magistrate, any small claims action for malpractice, error or mistake against a provider of health care shall be referred for the convening of a medical malpractice tribunal pursuant to G.L. c. 231, § 60B.

Commentary to 2009 Amendments

The change to paragraph (a) clarifies that any party seeking to transfer a small claim action must do so prior to the day of trial before the magistrate, thereby avoiding any undue inconvenience to the non-moving party.

Commentary to 2004 Amendment

The addition to paragraph (a) clarifies that any request to transfer a small claim to the regular civil docket must be made prior to the initial trial and may not be made for the first time when an appeal is pending for trial before a judge or jury.

Commentary to 2001 Amendments

The change to paragraph (a) clarifies that when a small claim is transferred to the regular civil docket the defendant must file an answer within twenty days, if no answer was previously filed in the small claim. This eliminates the present uncertainty as to the next procedural step where no answer has been filed in such transferred cases. The court is also authorized to require additional or substitute pleadings where appropriate to clarify the issues in the transferred case — for example, requiring the plaintiff to file a formal complaint or an answer to a defendant’s counterclaim. The former generalized reference to the “civil rules of court applicable to the department in which the case is pending” is no longer necessary because of the July 1, 1996 merger of the District/Municipal Courts Rules of Civil Procedure into the Massachusetts Rules of Civil Procedure.

The change to paragraph (b) clarifies that removal of a small claims action to the Housing Court Department under G.L. c. 185C, § 20 is a matter of right, requiring only a notice of removal, and not a motion that involves any exercise of discretion by the court from which the small claim is being removed.

Paragraph (c) has been added as a reminder to litigants and court personnel that occasionally medical malpractice claims (usually in the form of billing disputes) are brought as small claims, and they remain subject to the statutory procedures in G.L. c. 231, § 60B. Administrative arrangements for such medical malpractice tribunals are currently made through the Superior Court’s administrative office.

**Rule 5
AMENDMENTS AND DISCOVERY**

The court may at any time allow any claim or answer to be amended as justice

may require. No discovery shall be allowed except upon good cause shown. Service of witness summonses shall be in accordance with the Massachusetts Rules of Civil Procedure.

Commentary to 2001 Amendment

The former generalized reference to the “civil rules of court applicable to the department in which the case is pending” is no longer necessary because of the July 1, 1996 merger of the District/Municipal Courts Rules of Civil Procedure into the Massachusetts Rules of Civil Procedure.

**Rule 6
ATTACHMENTS**

Pre-trial attachment shall not be permitted. Post-trial attachment shall be in accordance with applicable statutory provisions and with the Massachusetts Rules of Civil Procedure.

Commentary to 2001 Amendment

The former generalized reference to the “civil rules of court applicable to the department in which the case is pending” is no longer necessary because of the July 1, 1996 merger of the District/Municipal Courts Rules of Civil Procedure into the Massachusetts Rules of Civil Procedure.

**Rule 7
TRIALS AND JUDGMENTS**

(a) **Agreement for Judgment.** The parties may at any time file with the court, in person or by mail, an agreement for judgment, ~~or an agreed-upon payment order, or both~~ which may include an agreement for a payment order, on the Agreement for Judgment form promulgated by the court. The clerk shall not accept for filing, and the court shall not approve, any agreement for judgment or for a payment order that is not set out on such form. Unless justice would not be served thereby, the court shall enter such agreement as the judgment or order of the court and notify the parties in writing that it has done so.

~~If such an agreement for judgment~~ the Agreement for Judgment form is filed prior to the scheduled trial date, neither party need appear on the scheduled trial date unless directed otherwise by the court.

If the Agreement for Judgment form is proffered when the parties are present, the court shall review the agreement and, if it includes a payment order, inquire of the defendant to ascertain that he or she is able to pay the payment order and understands the consequences of not complying with the payment order.

Unless justice would not be served thereby, the court shall enter such agreement as the judgment ~~or~~ and payment order of the court and notify the parties in writing that it has done so. The court shall not enter a payment order or otherwise approve any payment agreement that relies on exempt sources of income.

(b) **Continuances.** Where the defendant has been given notice as provided in these rules, trial shall not be continued to another date unless by agreement of the parties with the approval of the court, or unless there is a showing of good cause. Any motion for continuance shall be in writing unless the court permits an oral application. Except as provided in Rule 3(b), the defendant's appearing ready for trial and requiring the plaintiff to prove his or her case is not good cause for granting the plaintiff a continuance.

(c) **Plaintiff's Failure of a Party to Appear for or Proceed to Trial.** If the plaintiff fails to appear for trial and the defendant does appear, the claim shall be dismissed. If the defendant fails to appear for trial and the plaintiff does appear, the court may render judgment for the plaintiff and make an order for payment to the plaintiff. If the defendant appears for trial on the scheduled trial date and the plaintiff fails to appear or is not prepared to proceed to trial, judgment shall be entered for the defendant. If neither the plaintiff nor the defendant appears for trial, the claim a judgment of dismissal shall be dismissed entered.

(d) **Defendant's Failure to Appear for Trial.** If the plaintiff appears for trial and the defendant fails to appear, the court may render judgment for the plaintiff and make an order for payment to the plaintiff. Prior to entering such judgment the court shall review the Statement of Small Claim to determine whether further inquiry or an assessment of damages is required. Normally these should be done on the scheduled trial date. The court shall examine any of the following circumstances:

(1) *Uncertain Jurisdiction.* If the court's subject matter jurisdiction or proper service of the Statement of Small Claim is uncertain, the court shall inquire into the matter.

(2) *Uncertain Claim.* If the facts alleged, taken as true, do not appear to constitute a claim on which relief may be granted, the court shall inquire into the matter.

(3) *Uncertain Liability.* If the facts alleged, taken as true, do not establish each essential element of a claim, the court shall inquire into the matter and may elicit additional facts to determine if such element or elements are established.

(4) *Uncertain Damages.* If the Statement of Small Claim requests damages that are not a sum certain or a sum which can by computation be made certain, the court shall conduct an assessment of damages. The court shall inquire into any amounts sought which do not appear to be supported by the facts as alleged.

(5) Discretionary Awards. If the law requires an exercise of discretion in awarding multiple damages, a statutory penalty, or discretionary attorney's fees or court costs, the court shall inquire into the matter and exercise such discretion.

(6) When Review for Reasonableness Required. The court shall review any amounts that the law requires be examined for reasonableness, such as contractual attorney's fees or collection costs. In such matters, the court's function is not to substitute its own discretion for the parties' agreement, but to avoid court enforcement of a clearly unjust result.

(7) Inconclusive Military Affidavit. If the plaintiff is unable to file the affidavit required by the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq., stating that the defaulting defendant is not in military service and showing necessary facts to support the affidavit, the court shall inquire into the matter. If it appears that the defendant is in military service, the court shall not enter any default judgment without first appointing an attorney for the defendant, and under certain circumstances staying the entry of any default judgment, as required by the Act. If the court cannot determine from the affidavit whether the defendant is in military service, the court may exercise the discretion granted by the Act to require an indemnity bond, to stay execution, or to make such other orders as the court deems necessary to protect the rights of the defendant or the court may dismiss the claim without prejudice.

(8) Plaintiff in trade or commerce or pursuing assigned debt. Where the claim involves a plaintiff in trade or commerce or pursuing assigned debt and the plaintiff has not complied with Rule 2(b), the court shall not enter a default judgment for the plaintiff, and shall dismiss the claim without prejudice.

(e) Appearance as Substitute Counsel. An attorney who is not current counsel of record for a party shall not appear in court to answer for that party until he or she has filed with the court a written notice of appearance. An attorney appearing as substitute counsel for another attorney must file a written appearance, which may indicate that the attorney is appearing as substitute counsel solely for that day's proceedings. Any such notice of appearance shall be entered on the docket and filed with the case papers. The clerk need not notify counsel who has filed a time-limited appearance of any future events or proceedings in that case.

(d f) Trial. A small claim action shall generally be tried, and pretrial and post-judgment motions relating to such trials shall generally be determined, by a magistrate. Judges may hear such matters when deemed necessary by the court, provided that the defendant has first acknowledged in writing that, by electing to proceed with an initial trial by a judge, the defendant will waive the right to appeal for a subsequent trial by a judge or before a jury. Magistrate hearings shall be conducted in a courtroom, if one is available, and if not, in an area of the courthouse which is open and available to the public. Whenever possible, a court officer shall be in attendance. A magistrate shall sit at the clerk-magistrate's bench and not at the judge's bench, and shall not wear a robe.

At the beginning of the small claims session, a magistrate shall identify himself or herself as such to those present. A magistrate who has acted as a mediator pursuant to Uniform Magistrate Rule 4 shall not thereafter rule on any motion, nor preside over any trial or enforcement proceeding, in the same small claim.

(e g) Conduct of Trials. All small claim proceedings shall be recorded in accordance with applicable rules of court. The parties and witnesses testifying shall be sworn. The court shall conduct the trial in such order and form and with such methods of proof as it deems best suited to discover the facts and do justice in the case. The participation by attorneys representing parties may be limited in a manner consistent with the simple and informal adjudication of the controversy. Non-attorneys shall be allowed to assist parties in the presentation or defense of their cases when, in the judgment of the court, such assistance would facilitate the presentation or defense. When an oral motion has been made, the clerk shall note in the docket any action taken on the motion.

(f h) Judgments. Judgment shall be entered forthwith upon the decision of the court. The date of judgment shall be the date the judgment is entered in the docket. The clerk shall promptly complete and send to each party by first class mail the Notice of Judgment and Order form.

(g i) Payment Hearing and Orders to Pay. If the decision of the court is for the plaintiff, the court shall, except where justice will not be served thereby, also order payment to the plaintiff, or to the court on behalf of the plaintiff, of the amount of the judgment and costs, as the case may be, on or by a date stated or in specified installments. If the defendant has appeared and is before the court at the time of decision and if the defendant does not pay the amount of the judgment and costs or agree to a payment schedule acceptable to the plaintiff, the court shall conduct a payment hearing, including requiring the defendant to complete a written financial statement signed under the penalties of perjury. The financial statement shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be available to the court, to attorneys whose appearances are entered in the case and to the parties to the case. If the defendant is not before the court at the time of decision or the defendant has not appeared, the order shall be for the full amount of the judgment and costs, payable in full in thirty days, unless the court orders otherwise. The provisions of an order to pay shall be stated on the Notice of Judgment and Order form. Unless a payment hearing is waived by the plaintiff, the court shall also schedule the matter for a payment hearing thirty days from the date of judgment or shortly thereafter. The Notice of Judgment and Order form shall advise the parties that, unless the defendant timely appeals from the judgment or makes payment as ordered, the defendant is required to complete a written financial statement under the penalties of perjury, to provide the plaintiff with a copy of the statement prior to the payment hearing, and to appear in court on that date ~~if payment has not been made as ordered~~. The Notice shall further state that any such financial statement shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be

available to the court, to attorneys whose appearances are entered in the case and to the parties to the case. The Notice shall further state that if the defendant fails to appear on that date and the plaintiff does appear and states under oath or in writing under the penalties of perjury that payment has not been made as ordered, the court may immediately issue a writ of capias to bring the defendant before the court without the need for prior service of an Order to Show Cause pursuant to Rule 9(a). The Notice of Judgment and Order form shall also advise the parties that they are not required to appear in court on that date if payment has been made as ordered. Following the payment hearing the court may amend its previous order to pay or issue a new order.

(h j) **Costs.** If the decision of the court is for the plaintiff, the plaintiff's actual cash disbursements for the entry fee and surcharge shall be allowed as costs. Witness fees and other costs shall be allowed only by special order of court. The court may, in its discretion, award additional costs in a sum not exceeding one hundred dollars against any party who has set up a frivolous or misleading claim or answer, or has otherwise sought to hamper a speedy and fair determination of the claim. The court may at any time amend the judgment to add the cost of service of any post-judgment process that was necessary to enforce the judgment.

(† k) **Execution.** Execution shall issue to the plaintiff upon written request after the payment hearing, or if no payment hearing is scheduled, thirty fifteen business days of the date after the entry of judgment. Execution shall be in accordance with the statutory requirements for execution on civil judgments generally; provided, however, that execution shall in no way affect the procedure for enforcement of judgments under Rule 9 of these rules, except that double satisfaction of judgments shall not be allowed.

Commentary to 2009 Amendments

New paragraph (a) requires use of the official Agreement for Judgment form, which includes the list of statutory exemptions. This insures that the court does not order or otherwise endorse any private payment agreement that relies on exempt sources of income. General Laws c. 224, § 16 (made applicable to small claims by G.L. c. 218, § 22) prohibits the court from ordering a defendant to make any payment from exempt income. Likewise it is not appropriate for the court to endorse any voluntary payment agreement that relies on exempt sources of income.

The amendment to paragraph (b) makes clear that a defendant's appearance for trial does not automatically result in prejudice to the plaintiff sufficient to trigger grounds for a continuance pursuant to Rule 3(b).

The amendment to paragraph (c) provides that judgment is to be entered for the defendant when a plaintiff is unable to proceed to trial and there is no good cause basis for a continuance.

Paragraph (d) now lists specific matters that must be considered by the court before a default judgment may be entered, in order to determine legal liability, correctly calculate an award, and avoid any misuse of the small claims court. These are obligations that are entirely consistent with the court's obligation in an adversarial proceeding to maintain his or her neutrality and include the following:

(d)(1) Uncertain Jurisdiction. When the court's jurisdiction is questionable (e.g., a claim that

appears to fall under the Massachusetts Tort Claims Act), then the matter must be reviewed by the court for a determination as to whether jurisdiction exists.

(d)(2) Uncertain Claim. By defaulting, a defendant admits any facts alleged in the Statement of Small Claim, but does not admit legal liability. If there is uncertainty, the court must determine whether the Statement of Small Claim sets forth a cognizable cause of action on which relief may be granted. While Rule 2 does not require the allegations of facts, only facts alleged are admitted by a defendant's default.

(d)(3) Uncertain Liability. If the facts alleged do not include all essential elements of the claim, then the court must elicit these additional facts before a default judgment may enter. Since a defaulting defendant is deemed to have admitted the facts set forth in the Statement of Small Claim, the court may not require the plaintiff to offer evidence of a prima facie case, except as to any element of the claim that is not covered by the facts set forth in the statement. A default judgment may enter only if the facts alleged in the Statement of Small Claim and any additional facts elicited and established by evidence provide a prima facie case on a recognized claim for which relief may be granted. This does not require the court to raise potential matters of defense not raised by the defendant. There are differing views as to the appropriateness of doing so, given the tension between the special nature of small claim proceedings and the court's ethical obligations to maintain his or her neutrality.

(d)(4) Uncertain damages. The court must conduct an assessment of damages whenever the Statement of Small Claim requests damages that are not a sum certain or in instances where the amount claimed appears to be inflated or unrelated to the claim. No assessment of damages should be conducted except as indicated in this rule.

(d)(5) Discretionary awards. A small claim must be reviewed by the court whenever an exercise of discretion is required in awarding multiple damages (e.g., in G.L. c. 93A consumer protection claims), statutory damages (e.g., for bad checks and shoplifting claims), or discretionary attorney fees or court costs.

(d)(6) Review for reasonableness. Some items that are not considered discretionary must still be reviewed by the court for reasonableness (e.g., contractual attorney fees or collection costs).

(d)(7) Inconclusive military affidavit. Where the plaintiff is unable to file the required affidavit, the court cannot enter a default judgment without further inquiry and compliance with the requirements of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq.

(d)(8) Plaintiff in trade or commerce or pursuing assigned debt. Before entering a default judgment, the court must review the Statement of Small Claim to determine whether the plaintiff is required to comply with Rule 2(b) and if so whether the plaintiff has properly done so.

When the court must conduct such a review or assessment, normally it should be done on the scheduled trial date.

Paragraph (e) now requires that substitute or "covering" counsel file an appearance. The rule permits substitute counsel to file a time limited appearance, thereby acknowledging a common practice in small claim proceedings while permitting the court to maintain an accurate record of all attorneys who appear before the court. As the rule applies exclusively to litigants who are already represented by counsel, it does not implicate the terms of the Supreme Judicial Court order, effective May 1, 2009, regarding Limited Assistance Representation.

Paragraph (k) now delays the issuance of an execution until after the payment hearing or, if no payment hearing is scheduled, until the expiration of the usual 30-day payment order. This avoids any unfair surprise to the defendant by delaying any levy on the judgment until the defendant has had an opportunity to pay as ordered or to attend a payment hearing.

Please note that due to the insertion of new paragraphs d and e in Rule 7 of the 2009 Amendments, paragraphs f-k were formerly paragraphs d-i.

Commentary to 2001 Amendments

New paragraph (a) encourages the parties to file agreements for judgment or payment orders whenever they are able to reach such agreement.

New paragraph (d) is necessary to conform this Rule to the intent of the small claims amendments enacted by St. 1992, c. 379 that small claims matters generally be heard in the first instance by a magistrate. The new paragraph recognizes the authority of judges to adjudicate small claims cases in the first instance when needed in a particular court. The language of the paragraph responds to the Supreme Judicial Court's decision in *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic*, 430 Mass. 607 (2000) which holds that, by proceeding with an initial hearing by a judge, a defendant, including a plaintiff or a third party with respect to any counterclaim or any third-party claim brought against him or waives his right to appeal for a subsequent trial by a judge or before a jury. The language also responds to the Supreme Judicial Court's acknowledgment in *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic, supra* at 610, that magistrates may determine contested motions in small claims actions, thereby in effect overruling the decision of the Appellate Division of the Boston Municipal Court in *Acentech, Inc. v. Cecconi*, 1994 Mass. App. Div. 44. (Note: On October 25, 2000, the Appeals Court decided *Boat Maintenance & Repair Co. v. Lawton*, 50 Mass. App. Ct. 329, in which that court determined that a clerk-magistrate had no authority to hear and decide a contested motion in a small claim action. However, in so deciding, the Appeals Court did not acknowledge the Supreme Judicial Court's earlier decision in *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic, supra*).

Paragraph (d) also states that magistrates who have mediated a small claim be disqualified from ruling on motions or presiding over any trial on the merits. It also requires recusal from any enforcement proceedings in the same small claim, because it seems inappropriate for one person to exercise both mediation and enforcement functions in the same case, even at different stages of the proceedings. The requirement that a court officer be in attendance whenever possible is strongly recommended by the Trial Court Committee on Small Claims Practices and Procedures. The remaining amendments in paragraphs (d) and (e) codify the procedural directives promulgated in the Policy Statement of Chief Justice for Administration and Management John E. Fenton, Jr., "Policies Regarding Hearing Small Claims under the Court Reorganization Act, Chapter 379 of the Acts of 1992" (February 19, 1993). Those involving the use of a courtroom and an appropriate bench, and involving the recording of proceedings, were also supported by the Trial Court Committee on Small Claims Practices and Procedures.

Paragraph (g) introduces an automatic payment hearing. The Trial Court Committee on Small Claims Practices and Procedures has found that frustration with the current system for collecting judgments is the principal source of citizen dissatisfaction with the small claims process. Presently the burden falls to the prevailing party to initiate collection proceedings and to get the defendant before the court. The new payment hearing mandates a more active role for the courts. As the Committee has noted:

"this streamlined approach to collections would be less costly for the prevailing party because an automatically scheduled hearing would eliminate the need, in the first instance, for service of a Notice to Show Cause. In addition, the parties would more clearly recognize that they have thirty days to work out payment in a non-adversarial manner."

The provisions in Paragraph (g) for the filing of a financial statement also require that any such financial statement is to be protected from public inspection in terms similar to those of Rule 401(d) of the Supplemental Rules of the Probate Court.

The Committee secured the cooperation of three District Courts and one Housing Court and ran the payment hearing system as described in paragraph (g) on an experimental basis. The results not only supported the Committee's belief that more judgments would be satisfied at an early date with less cost to the plaintiff, but court staff also found that the new procedure was less time consuming for them.

Since no appeal lies from the entry of a default judgment, a defendant against whom a default judgment has been entered must, upon receipt of a Notice of Judgment and Order form, complete a written financial statement, provide a copy of that statement to the plaintiff, and appear in court on the date specified in the Notice and Order form in accordance with the provisions of Rule 7(g) if payment has not been made as ordered.

The amendment to paragraph (h) provides authority for the longstanding practice of requiring the defendant to reimburse the plaintiff for the costs of service of any post-judgment Order to Show Cause or *capias* that is necessary to enforce the judgment.

Rule 8

RELIEF FROM JUDGMENT OR ORDER

Within one year of the date of judgment the court may, upon a party's application and after notice to the other party in such form as the court deems appropriate, vacate or grant relief from any judgment or order, including an order for a judgment of dismissal under Rule 7(b), entered under these Rules ~~for want of actual notice to a party, for error or for any other cause~~ that the court may deem sufficient, and may supersede execution.

At any time after judgment, with notice to the other party, a party may apply to vacate or grant relief from any judgment or order, including an order for a judgment of dismissal under Rule 7, if it is alleged that the party did not receive actual notice of the claim and the date of trial. If the court determines that no notice was received, the court shall vacate or grant relief from any judgment or order entered under these rules.

The court may also order the repayment of any amount collected under such judgment or order, and any action by the court may be made conditional upon the performance of any reasonable condition, including payment of or reimbursement for any reasonable expenses incurred by the other party.

Commentary to 2009 Amendment

This amendment requiring relief without regard to the time within which the relief is sought, reflects the due process requirements embodied in Mass. R. Civ. P. 60(b)(4) that a judgment may be challenged and must be voided at any time for lack of notice. See, e.g., *Bowers v. Board of Appeals of Marshfield*, 16 Mass. App. Ct. 29, 31 (1983). The one-year limitation applies to all other grounds for relief from judgment.

Commentary to 2001 Amendment

These amendments clarify two ambiguities in the text of Rule 8. The first makes clear that relief from judgment may not be granted on *ex parte* application. The form, but not the obligation, of giving

notice to the other parties is meant to be discretionary with the court. The second makes clear that the court, in vacating an order of dismissal or a default judgment, may, in appropriate circumstances, award reasonable expenses such as lost wages to the other party if the party was present on the day the case was dismissed or the defendant defaulted.

Rule 9 ENFORCEMENT OF JUDGMENTS

(a) **Order to Show Cause.** On an order issued after the payment hearing, or if there was no payment hearing, upon being informed by the plaintiff that a defendant who has been ordered to pay has failed to obey the order, the clerk shall schedule the matter before the court for enforcement proceedings and shall issue a Notice to Show Cause to the plaintiff, who must arrange for the Notice to Show Cause to be served by an officer duly qualified to serve it. The court may provide for any other means of service in individual cases as is deemed appropriate. The Notice to Show Cause shall indicate the date and time of hearing.

(b) **Enforcement Proceedings.** Upon hearing, the court shall take such action, permitted by law, as it deems appropriate to the end that orders of payment are complied with promptly and satisfaction of the judgment in the case is not frustrated. Such enforcement proceedings may be conducted either by a judge or by a magistrate, but a magistrate shall have no authority to enter an adjudication of civil contempt or to issue an order of incarceration. When enforcement proceedings are conducted by a magistrate and it appears that such action may be required, the magistrate shall refer the matter to a judge, who shall make an independent determination whether to enter an adjudication of civil contempt and may issue an order of incarceration or such other order as may be appropriate to enforce payment of the judgment. If a judge is available at the time of such referral, the matter may immediately be placed before the judge

(c) **Inability to Pay.** Unless the court orders otherwise, a defendant who asserts that he or she is presently unable to pay the amount of the judgment in full shall complete a financial statement on a form provided by the court and signed under the penalties of perjury prior to being examined by the court. The financial statement shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be available to the court, to attorneys whose appearances are entered in the case, and to the parties in the case. If the court previously determined that at that time the defendant was financially able to comply with the court's payment order, the burden of proof shall be on the defendant to establish that he or she is currently unable to comply with the court's payment order.

(d) **Defendant's Move to Another District.** If, after judgment has been entered ~~a small claim is filed~~, the defendant moves out of the judicial district where the action was brought, the court may, on request of the plaintiff, transfer the action to the division of the court in the judicial district to which the defendant has moved. If the court orders

such a transfer, the docket entries and the original papers in the case shall be forwarded to said court, without payment of an entry fee, and the case shall proceed in that court as though originally entered therein.

(e) **Acknowledgment of Satisfaction of Judgment.** Within ten days of full payment of a judgment, the plaintiff shall file an Acknowledgment of Satisfaction of Judgment with the court. Upon the filing of such acknowledgment, the clerk shall recall any outstanding execution.

(f) **Court Determination of Satisfaction of Judgment.** At the request of the defendant, and upon notice to the plaintiff, a judge or magistrate may order the entry of a docket notation indicating full satisfaction of the judgment if the defendant files an affidavit stating that he or she has made full payment of the judgment, and that the plaintiff has been requested to file an acknowledgment of satisfaction of the judgment and refuses to do so, or that the present address of the plaintiff is unknown. The defendant shall accompany such affidavit with canceled checks or money orders for the full amount of the judgment written by the defendant and made payable to and endorsed by the plaintiff, or cash receipts for the full amount of the judgment made out to the defendant and signed by the plaintiff, or other documents demonstrating the plaintiff's receipt of full payment of the judgment. Any such docket notation shall establish a rebuttable presumption of full payment of the judgment.

Commentary to 2009 Amendments

Paragraph (d) now authorizes transfer to the appropriate court when the defendant moves from the original court's geographical jurisdiction, whether before or after judgment.

Paragraph (e) requires for the first time in Massachusetts that the plaintiff file an acknowledgment of satisfaction with the court once a judgment is paid in full. Paragraph (f) provides a remedy to the defendant where plaintiff fails to file an acknowledgment. These additional provisions are necessitated by the difficulty that defendants increasingly experience in proving that a judgment that appears in a credit report was satisfied, sometimes years before.

Commentary to 2001 Amendments

Paragraph (a) is amended to eliminate the directive to the clerk to "make such inquiry into the matter [of non-payment], if any, as he deems useful." Since a clerk may later preside over enforcement proceedings as a magistrate, such informal contacts are best avoided since they might well involve ex parte discussions that would be inconsistent with a magistrate's responsibilities under S.J.C. Rule 3:12, Canon 3.

Paragraph (b) reflects the recommendation of the Trial Court Committee on Small Claims Practices and Procedures that magistrates be authorized to preside over proceedings to enforce small claims judgments, but not to enter adjudications of civil contempt or to make orders of incarceration. When such steps appear necessary, the matter is to be transferred to a judge "immediately," which assumes no need for rescheduling or further notice if a judge is then available.

While it is expected that most proceedings to enforce small claims judgments will be conducted by magistrates, paragraph (b) preserves the authority of judges to preside over such enforcement hearings

ab initio.

New paragraph (c) makes it a matter of routine for a defendant who claims to be unable to pay the judgment in full to complete a sworn financial statement. The specific assignment of the burden of proof in paragraph (c) restates current case law. *Roy v. Leventhal*, 5 Mass. App. Ct. 792 (1977). See also G.L. c. 215, § 34 (in Probate Court contempt proceedings, “the defendant shall have the burden of proving his or her inability to comply with the pre-existing order or judgment of which the complaint alleges violation”). The defendant’s financial statement shall be treated as confidential information in terms similar to those of Rule 401(d) of the Supplemental Rules of the Probate Court. See Rule 7(g) and the Commentary thereto.

Rule 10 APPEAL

(a) ~~**Transmittal of Case Claim of Appeal.**~~ A defendant’s claim of appeal for trial by a judge or before a jury of six persons shall be made in writing, shall comply with the requirements of G.L. c. 218, § 23, and shall specify whether the defendant claims trial by a judge or before a jury. The defendant shall mail a copy of the claim of appeal to the plaintiff. Upon the defendant’s filing of a claim of appeal, the clerk shall forthwith note on the docket of the case ~~his~~ the receipt of the claim of appeal, the filing fee for the appeal required by section 23, and any appeal bond required by section 23 or an equivalent cash deposit in lieu thereof. If each of these items has been timely received and the defendant has appealed for trial by a judge, the clerk shall schedule the matter before a judge of that division for trial. If each of these items has been timely received and the defendant has appealed for trial before a jury, the clerk shall If a jury trial is to be held at another division, the clerk shall transmit the original docket entries and the original papers in the case, or an attested copy of the original docket entries and the original papers in the case, to the clerk of the appropriate jury session. The court may waive the filing fee if the applicant is indigent and may waive the bond requirement if it finds that the applicant has insufficient funds to furnish the bond and that the appeal is not frivolous. Prior to the case being tried ~~by a judge in the division from which the case is appealed~~ or transmitted to the jury session at another division, any judge of the division from which the case is appealed may hear and determine any question raised by a party concerning the defendant’s compliance with the statutory requirements for appeal. The clerk of the division from which the case is appealed shall retain custody of any appeal bond posted pursuant to section 23 or any equivalent cash deposit in lieu thereof, and shall deposit with the State Treasurer the filing fee and surcharge for the appeal.

If any required item has not been timely received, the clerk shall so notify both parties, shall return any filing fee, surcharge, appeal bond or cash deposit in lieu thereof forwarded by the defendant, and shall note such action, and the reasons therefor, on the docket. The clerk’s notice shall inform the defendant that he may have the issue of his compliance with the statutory prerequisites for appeal determined by a judge, upon motion filed within ten days of receiving the notice.

(b) **Conduct of Trials.** Trials by a judge or before a jury shall be conducted in accordance with the provisions of Rule 7, and, in the case of a trial before a jury, in accordance with the provisions of law applicable to jury trials in the Superior Court Department. In a trial before a jury, the judge may direct that any provisions of the Massachusetts Rules of Civil Procedure be utilized, if not inconsistent with Rule 7. A counterclaim or third-party claim may not be raised for the first time on appeal.

(c) **Judgments and Orders to Pay.** Judgment shall be entered forthwith upon the decision of the judge or the verdict of the jury. Subject to any continuance granted pursuant to Rule 7(b), a judgment for the plaintiff shall be entered forthwith if the defendant fails to appear for trial or is not prepared to proceed to trial and the plaintiff does appear, or if the defendant withdraws the claim of appeal. Subject to any continuance granted pursuant to Rule 7(b), a judgment for the defendant shall be entered forthwith if the plaintiff fails to appear for trial or is not prepared to proceed to trial and the defendant does appear. Subject to any continuance granted pursuant to Rule 7(b), a judgment dismissing the claim shall be entered forthwith if both the plaintiff and the defendant fail to appear for trial. Except where justice will not be served thereby, the judge shall, after holding a payment hearing, forthwith order payment to the plaintiff, in accordance with Rule 7(i). Otherwise the judge must schedule a payment hearing in accordance with Rule 7(i) in the division from which the case was appealed. Any order for payment shall grant the party no less than thirty days within which to pay. The clerk shall promptly furnish each party with written notice of the court's judgment, any order for payment, and any payment hearing. When judgment is entered in the jury session, such notice shall be given by the clerk of the jury session.

(d) **Post-judgment Proceedings in Jury Session at Another Division.** When a small claims action has been tried on appeal in the jury session at another division, any post-trial motions filed within ten days after the entry of judgment shall be filed with the clerk of the jury session and heard by the judge who presided over the trial. If justice will be served thereby, the judge may stay, modify, or supersede any order for payment already made.

Unless the judge orders otherwise, upon the expiration of ten days after judgment, the case shall be retransferred to the division from which it was appealed for any further enforcement proceedings pursuant to Rule 7 and Rule 9, except that a case shall not be retransferred until any motion filed, or any appeal claimed, within ten days after entry of judgment has been decided. The clerk of the jury session shall transmit original or attested copies of the judgment, any order for payment, any order deciding a post-trial motion, and any rescript of an appellate court, to the clerk of the division to which the case is being re-transferred.

Any motions which are filed after the case has been re-transferred shall be filed with the clerk of the division to which the claim has been re-transferred. The clerk shall transmit any such motion that affects the judgment to the judge who presided over the trial in the jury session, who may determine such motion, with or without hearing,

wherever the judge is then sitting. Other motions that affect only an order for payment or proceedings to enforce the judgment may be heard by any judge or magistrate sitting in the division to which the claim has been re-transferred.

(e) Appeal from the Housing Court Department to the Appeals Court. Any claim of appeal from the Housing Court Department to the Appeals Court from the judgment in a small claims action tried by a judge or before a jury shall be filed with the clerk of the division or the jury session where the case was tried within ten days after entry of judgment. If justice will be served thereby, the judge who presided over the trial may stay, modify, or supersede any order for payment already made. Further procedures on appeal shall be governed by the Massachusetts Rules of Appellate Procedure.

Commentary to 2009 Amendments

Paragraph (c) is amended to provide that when either the plaintiff or defendant fails to appear for trial, or appears but is not prepared to proceed with trial and there is not a good cause basis for a continuance, judgment is to be entered in favor of the party appearing and ready to proceed.

Commentary to 2001 Amendments

Most of these amendments are necessary because an appealing party must now elect between trial by a judge and trial before a jury. Jury session procedures are amended to permit the increasingly frequent practice of sending original case papers to the jury session (while retaining copies at the primary court). The authority granted the Chief Justice of the District Court Department to designate where trials are to be heard in G.L. c. 218, § 23, permits the retention of jury-waived cases in the court where the case originated regardless of whether that court has a jury session. The purpose is to take caseload pressure away from busy jury sessions.

Unlike the District Court and Housing Court Departments, the Boston Municipal Court Department of the Trial Court does not consist of separate geographical divisions. Accordingly, all appeals from a small claims session of the Boston Municipal Court are to a jury session of that same court and all papers related to such appeals are processed within the Office of the Clerk of the Boston Municipal Court for Civil Business.*

In paragraph (a), the reference to the surcharge required by G.L. c. 262, § 4C for new entries “to which a separate docket number is assigned” has been deleted since virtually all courts no longer assign a new docket number when a magistrate’s decision in a small claim is appealed to a judge or a jury.

The deletion in paragraph (b) of the reference to the District/Municipal Courts Rules of Civil Procedure reflects their July 1, 1996 consolidation with the Massachusetts Rules of Civil Procedure.

The limitation in paragraph (e) of appeals to the Appeals Court to those deriving from cases tried by a judge or before a jury in the Housing Court Department reflects the decision of the Supreme Judicial Court in *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic*, 430 Mass. 607, 610 n.9 (2000). There, in a case involving a motion heard initially by a District Court judge, the Supreme Judicial Court stated:

“To the extent that Rule 10(e) of the Uniform Small Claims Rules (1999) provides for an appeal to the Appeals Court from the jury session, it is in conflict with G.L. c. 218, § 23, which provides for the report of questions of law to the appellate division in certain circumstances. General Laws

Chapter 211A, § 10 provides for an appeal from the appellate division to the Appeals Court.”

However, there is no appellate division in the Housing Court Department, thereby necessitating, in order to provide for appellate review, an appeal to the Appeals Court from cases heard by a judge or before a jury in the Housing Court Department.

2009 Note

*On July 1, 2003 the Boston Municipal Court Department was expanded to include seven former divisions of the District Court located in Suffolk County.



TRIAL COURT OF MASSACHUSETTS
ADMINISTRATIVE OFFICE OF THE DISTRICT COURT

FORMS

TO IMPLEMENT AMENDMENTS TO
TRIAL COURT RULE III, UNIFORM SMALL CLAIMS RULES
Effective October 1, 2009

1. **VERIFICATION OF DEFENDANT'S ADDRESS** form (Rule 2[b])
2. **AGREEMENT FOR JUDGMENT AND FOR PAYMENT ORDER** form [two-sided] (Rule 7[a])
3. **APPEARANCE OF SUBSTITUTE COUNSEL** form (Rule 7[b])
4. **SATISFACTION OF JUDGMENT** form (Rule 9[e])
5. **SATISFACTION OF JUDGMENT ON COUNTERCLAIM** form (Rule 9[e])
6. Revised Instructions for obverse of "STATEMENT OF SMALL CLAIM AND NOTICE OF TRIAL" (DC-SC-1) form *(to be substituted in next printing of form)* (Rule 2[a])

VERIFICATION OF DEFENDANT'S ADDRESS BY PLAINTIFF IN TRADE OR COMMERCE OR PURSUING ASSIGNED DEBT	For Court Use Only 	DOCKET NO.	Trial Court of Massachusetts Small Claims Session
PLAINTIFF(S)	vs.		COURT DIVISION
DEFENDANT(S)	<i>This form must be filed along with the Statement of Small Claim for any claim incurred in the course of plaintiff's trade or commerce, or for assigned debt. Use separate forms for multiple defendants if they have different mailing addresses.</i>		
MAILING ADDRESS OF DEFENDANT(S)			
Pursuant to Uniform Small Claims Rule 2(b), the defendant's mailing address shown above has been verified in the following manner:			
<i>Check at least one of these methods:</i>	<input type="checkbox"/> Verified with the following municipal record within the past 12 months: <i>Municipal record (e.g., street list or tax records):</i> _____ _____ <i>Date verified:</i> _____		
	<input type="checkbox"/> Verified with Registry of Motor Vehicles records within the past 12 months. <i>Date verified:</i> _____		
	<input type="checkbox"/> Verified by receipt of correspondence from the defendant with that return address within the past 12 months. <i>Date correspondence received:</i> _____		
	<input type="checkbox"/> Other verification from the defendant within the past 12 months that address is current: <i>Describe:</i> _____		
<u>or</u>	<input type="checkbox"/> A letter was mailed to the defendant at the above address by first class mail on: <i>Date within past 6 months, and at least 4 weeks before filing this small claim:</i> _____ and has not been returned to sender by the postal service.		
<i>Check at least two of these methods:</i>	<input type="checkbox"/> Verified using the following online database (other than white pages or other unpaid general telephone directory) within the past 6 months: <i>Name and source of database:</i> _____		
	<input type="checkbox"/> Verified with an additional source, specifically: _____ _____		
DATE SIGNED	SIGNED UNDER THE PENALTIES OF PERJURY X _____ PLAINTIFF OR PLAINTIFF'S ATTORNEY		

**AGREEMENT FOR JUDGMENT
AND FOR PAYMENT ORDER**

DOCKET NUMBER

**Trial Court of Massachusetts
Small Claims Session**



PLAINTIFF(S) WHO ARE PARTIES TO THIS AGREEMENT

COURT DIVISION

vs.

DEFENDANT(S) WHO ARE PARTIES TO THIS AGREEMENT

REQUESTED DATE OF PAYMENT REVIEW

No payment review requested

JUDGMENT FOR PLAINTIFF(S). It is hereby agreed that in this small claim the Court may enter a judgment for the plaintiff(s) named above and against the defendant(s) named above for:

\$ _____ DAMAGES

Plus PREJUDGMENT INTEREST from _____ (date)
at the 12% statutory rate or the _____% contractual rate

\$ _____ COSTS

Prejudgment interest is waived by the plaintiff.

\$ _____ ATTORNEY FEES

Postjudgment interest is waived by the plaintiff.

(if authorized by contract or statute)

PAYMENT ORDER. It is also agreed that the Court may enter a payment order that requires the defendant(s):

to pay the plaintiff(s) the total amount of the judgment on or before _____ (date).

to pay the plaintiff(s) \$ _____ each week month beginning on _____ (date)
until the total amount of the judgment is paid in full.

This payment order will not be satisfied with any exempt income listed on pg. 2 of this form.

REVISED PAYMENT ORDER. In this small claim the Court has already entered a judgment and it is hereby agreed that the Court may revise that payment order as follows:

This payment order will not be satisfied with any exempt income listed on pg. 2 of this form.

SATISFIED IN FULL. It is also agreed that this claim or judgment has already been satisfied in full.
(By court rule plaintiff(s) must file an acknowledgment of satisfaction with the court when the judgment has been paid in full.)

JUDGMENT FOR DEFENDANT(S). It is hereby agreed that in this small claim the Court may enter a judgment for the defendant(s) named above, and the plaintiff(s) shall take nothing on this claim.

DISMISSAL. It is hereby agreed that the Court may enter a judgment **dismissing** this small claim.

JUDGMENT ON COUNTERCLAIM. It is also agreed that the Court may enter the following judgment on the **counterclaim** brought by the above-named defendant(s) against the above-named plaintiff(s):

OTHER PROVISIONS OR COMMENTS

Upon acceptance by the Court, a judgment and payment order will be entered in accordance with the above terms and will be enforceable as an order of the Court.

SIGNATURE OF PLAINTIFF(S) OR ATTORNEY FOR PLAINTIFF(S) PRINT NAME DATE

SIGNATURE OF DEFENDANT(S) OR ATTORNEY FOR DEFENDANT(S) PRINT NAME DATE

INCOME THAT IS EXEMPT FROM PAYMENT ORDERS

1. **ALL INCOME FROM THE FOLLOWING SOURCES** is exempt by law from any payment order:

- Unemployment Benefits (G.L. c. 151A, § 36)
- Workers Compensation Benefits (G.L. c. 152, § 47)
- Social Security Benefits (42 U.S.C. § 401)
- Federal Old-Age, Survivors & Disability Insurance Benefits (42 U.S.C. § 407)
- Supplementary Security Income (SSI) for Aged, Blind & Disabled (42 U.S.C. § 1383[d][1])
- Other Disability Insurance Benefits up to \$400 weekly (G.L. c. 175, § 110A)
- Emergency Aid for Elderly & Disabled (now G.L. c. 117A)
- Veterans Benefits
 - Federal Veterans Benefits (38 U.S.C. § 5301[a])
 - Special Benefits for Certain WW II Veterans (42 U.S.C. § 1001)
 - Medal of Honor Veterans Benefits (38 U.S.C. § 1562)
 - State Veterans Benefits (G.L. c. 115, § 5)
- Transitional Aid to Families with Dependent Children (AFDC) Benefits (G.L. c. 118, §10)
- Maternal Child Health Services Block Grant Benefits (42 U.S.C. § 701)
- Other public assistance benefits (G.L. c. 235, § 34, fifteenth)

2. In addition, **A PORTION OF WAGES OR EMPLOYMENT-BASED RETIREMENT PAYMENTS**

is exempt by law from any payment order. The exempt amount is

\$218 or 75% of your weekly disposable earnings, whichever is greater.

Your “**weekly disposable earnings**” are your gross wages, salary or employment-based periodic retirement payments, *minus* any deductions required by law (including withholding taxes, social security [FICA], and mandatory public employee retirement contributions). Do *not* deduct any voluntary deductions, union dues or garnishments.

The minimum Federal exemption is equal to the Federal minimum wage (\$7.25 as of 7/24/09) multiplied by 30, or \$218 (15 U.S.C. §§ 1671-1677). Massachusetts law exempts the first \$125 in weekly “wages then due . . . for labor performed or services rendered” (G.L. c. 224, § 16 & c. 246, § 28) but this is normally less than the Federal exemption.

DEFENDANT’S WORKSHEET FOR CALCULATING EXEMPT AMOUNT OF WAGES OR EMPLOYMENT-BASED RETIREMENT PAYMENTS

Write the amount of your “**weekly disposable earnings**” (as defined above) here = \$ _____

If your weekly disposable earnings are **less than \$218**,
enter the amount of your weekly disposable earnings →

If your weekly disposable earnings are **\$218–\$290**, enter \$218 →

If your weekly disposable earnings are **more than \$290**,
enter 75% of your weekly disposable earnings →

\$

This is the amount of your
weekly disposable earnings that is exempt
from any payment orders.

APPEARANCE OF SUBSTITUTE COUNSEL

**Trial Court of Massachusetts
District Court Department
Small Claims Session**



CASE NAME

vs.

DOCKET NUMBER

COURT DIVISION

To the Clerk-Magistrate:

Pursuant to Trial Court Rule III, Uniform Small Claims Rule 7(b), please enter my appearance for

PARTY

as substitute counsel for current counsel of record in the above-numbered court action.

Pursuant to Rule 7(e), this appearance is limited to today's proceedings only and does not displace the appearance of current counsel of record, and all notices in this matter shall continue to be sent to current counsel of record.

ATTORNEY NAME

B.B.O. NUMBER *(Required)*

--	--	--	--	--	--

ATTORNEY FIRM

TELEPHONE NUMBER

STREET ADDRESS

EMAIL ADDRESS

CITY/TOWN

STATE

ZIP CODE



X

SIGNATURE OF ATTORNEY

DATE

**ACKNOWLEDGMENT OF
SATISFACTION OF JUDGMENT**

DOCKET NUMBER

**Trial Court of Massachusetts
District Court Department**



PLAINTIFF(S) FILING THIS FORM

COURT DIVISION

VS.

DEFENDANT(S)

DATE THIS JUDGMENT WAS ENTERED

I (we) hereby certify under the pains of perjury that:

- I am (we are) the **plaintiff(s)** in the above-listed small claim or civil action,
- I am (we are) the **attorney(s) for the plaintiff(s)** in the above-listed small claim or civil action,

and that the judgment entered by this Court in this matter against the above-listed defendant(s) on the above-listed date has been **FULLY SATISFIED.**

_____ DATE _____ PRINT NAME _____
PLAINTIFF

_____ DATE _____ PRINT NAME _____
ADDITIONAL PLAINTIFF

_____ DATE _____ PRINT NAME _____
ADDITIONAL PLAINTIFF

_____ DATE _____ PRINT NAME _____
ADDITIONAL PLAINTIFF

OR

_____ DATE _____ BBO No. _____
ATTORNEY FOR PLAINTIFF(S)

_____ DATE _____ BBO No. _____
ATTORNEY FOR PLAINTIFF(S)

ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT IN COUNTERCLAIM	DOCKET NUMBER	Trial Court of Massachusetts District Court Department
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DEFENDANT(S) FILING THIS FORM	COURT DIVISION
vs.	

PLAINTIFF(S)	DATE THIS JUDGMENT WAS ENTERED
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I (we) hereby certify under the pains of perjury that:

- I am (we are) the **defendant(s)** who prevailed in a counterclaim against the above-listed plaintiff(s) in the above-listed small claim or civil action,
- I am (we are) **attorney(s) for the defendant(s)** who prevailed in a counterclaim against the above-listed plaintiff(s) in the above-listed small claim or civil action,

and that the judgment entered by this Court in that counterclaim on the above-listed date for the defendant(s) and against the plaintiff(s) has been **FULLY SATISFIED.**

 X _____ DATE _____ PRINT NAME _____
DEFENDANT

 X _____ DATE _____ PRINT NAME _____
ADDITIONAL DEFENDANT

 X _____ DATE _____ PRINT NAME _____
ADDITIONAL DEFENDANT

 X _____ DATE _____ PRINT NAME _____
ADDITIONAL DEFENDANT

OR

 X _____ DATE _____ BBO No. _____
ATTORNEY FOR DEFENDANT(S)

 X _____ DATE _____ BBO No. _____
ATTORNEY FOR DEFENDANT(S)

INSTRUCTIONS FOR PERSONS FILING A SMALL CLAIM — Complete Parts 1-6 on front of form.

Part 1. You may file your small claim only in the court for the area where either the plaintiff or the defendant lives or has a place of business or employment. A small claim against a landlord arising from the rental of an apartment may also be filed where the apartment is located. You may find it easier to enforce a decision in your favor if you file your small claim where the defendant lives or works, but you are not required to do so. The Clerk-Magistrate's office can tell you which court serves an area and the fee you must pay to file your case.

Part 2. The person or business filing the claim is called the plaintiff.

Part 3. The person or business being sued is called the defendant. If you are suing a business that is not a corporation, you should name as the defendant the owner(s) doing business under that name; the names of the owner(s) can be obtained from the City or Town Clerk where the business's offices are located. If you are suing a business that is a corporation, you must have the exact legal name. You can find this information from the Corporate Records Division of the Secretary of State's Office, One Ashburton Place, Room 1712, Boston, MA 02108 (or online at <http://corp.sec.state.ma.us/corp/corptest/corpsearchinput.asp>).

Part 4. Fill in the amount you are suing for and briefly explain your claim. State your claim clearly so the defendant can understand why he or she is being sued. State specifically any amounts sought for damages, for multiple damages or statutory penalties, for attorney's fees, or for costs (including the amount of the filing fee), as well as the total amount being sought, exclusive of any prejudgment interest being sought from the court pursuant to statute. If your claim arose in the course of your trade or commerce, or you are pursuing a claim for assigned debt, also state: (1) the original creditor's name (if different from yours), (2) only the last four digits of any account number assigned by the original creditor, and the amount and date of the last payment, if any. Sign your name in the space provided.

Part 5. Indicate if you are willing to attempt to mediate this claim.

Part 6. If you know the defendant's social security number, you may determine whether he or she is on active military duty online at www.dmdc.osd.mil/scra/owa/home; otherwise, you must write to the appropriate military service headquarters (which are listed at www.defenseink.mil/faq/pis/PC09SLDR.html). If you are unable to determine whether the defendant is on active military duty and the defendant fails to appear, the court may require you to post a bond or may issue other orders to protect the rights of the defendant if he or she is on active military duty.

Bring or mail the completed form, with all parts intact, together with a check or money order (made payable to "Clerk-Magistrate") for the filing fee, to the Clerk-Magistrate's office of the court where you are filing your case.

If your claim arose in the course of your trade or commerce, or you are pursuing a claim for assigned debt, you must also file a separate "Verification of Defendant's Address" form with your claim, certifying that you have verified the defendant's mailing address in the manner set forth in that form. If you do not do so and the defendant fails to appear, you may not obtain a default judgment and your claim will be dismissed without prejudice. (This requirement does not apply if your claim arose from leasing or renting your residential property of three or fewer units that is also your primary residence unless you also own, manage or are otherwise involved in leasing or renting other residential property.)

INSTRUCTIONS TO THE PLAINTIFF AND THE DEFENDANT

1. WHAT IS A SMALL CLAIM?

The small claims court is designed to resolve smaller money claims, making it easier and less expensive for the public to use the court. The plaintiff named on the front of this form has brought a small claim against the defendant for the amount and reasons stated. Both sides must appear in court on the trial date and time shown on the front of this form unless the plaintiff and defendant settle this case before then.

2. HOW IS THE DEFENDANT NOTIFIED OF THIS CLAIM?

The defendant is sent a copy of this "Statement of Small Claim and Notice of Trial" by first class mail. General Laws c. 223A, § 6 usually requires that out-of-state defendants be sent their notice by certified mail with a return receipt. If the plaintiff inquires, the court will inform the plaintiff if the Postal Service has been unable to notify ("serve") the defendant.

3. ARE ATTORNEYS NEEDED IN SMALL CLAIMS COURT?

No, but you may hire one if you wish.

4. WHAT ARE "COSTS"?

If the plaintiff prevails, or if both sides settle the claim, the plaintiff may also recover from the defendant as "costs" the court filing fee and postage.

5. IS THE DEFENDANT REQUIRED TO FILE AN ANSWER?

The defendant is not required to file a written answer to the plaintiff's claim. However, the defendant may send a signed letter to the court, with a copy to the plaintiff, saying clearly and simply why the plaintiff should not prevail.

6. WHAT IF THE DEFENDANT BELIEVES THE PLAINTIFF OWES HIM OR HER MONEY?

In his or her answer or in a separate letter to the court, or on the trial date, the defendant may set forth in writing, with a copy to the plaintiff, any money claim against the plaintiff that is within the jurisdiction of the small claims court (a "counterclaim"). Both claims will be treated as one case and tried together if the defendant mails a copy of the counterclaim to the plaintiff at least ten days before the scheduled trial date, or if the magistrate orders that they be so treated. Such counterclaims are not compulsory.

7. WHAT IF THE DEFENDANT ADMITS OWING ALL THE MONEY?

The defendant should contact the plaintiff and arrange to make payment. If payment is not made before the trial date, both the plaintiff and defendant must appear in court or file with the court the official "Agreement for Judgment and for Payment Order" form. That form lists income sources that are exempt from any payment order.

8. WHAT IF THE DEFENDANT ADMITS OWING THE MONEY BUT NEEDS TIME TO PAY?

If the plaintiff and defendant agree on a proposed payment schedule, they must file with the court the official "Agreement for Judgment and for Payment Order" form. If this is not done before the trial date, both the plaintiff and defendant must appear in court on that date. The defendant must complete a "Financial Statement" form and give his or her reasons for requesting time to pay.

9. WHAT IF THE DEFENDANT BELIEVES HE OR SHE OWES NOTHING, OR ONLY SOME OF THE MONEY CLAIMED?

The defendant must appear in court on the trial date and will be able to question whether he or she owes money and, if so, how much.

10. WHAT IF I CANNOT COME TO COURT ON THE TRIAL DATE?

Call or write the person on the opposing side and ask him or her to agree to postpone ("continue") the case. Continuances should be only for a good reason, such as illness, an emergency, or the unavailability of a witness. You must write the Clerk-Magistrate of the court to ask that the court give you a continuance, whether or not you are able to reach the person on the opposing side, and whether both sides agree to a continuance or not. Do not wait until the last minute. If the other side makes a reasonable request for a continuance, it may save you some inconvenience if you agree to the request.

11. WHAT IF I DO NOT COME TO COURT ON THE TRIAL DAY?

If the defendant does not appear for trial and the plaintiff does appear, the court may enter a default judgment and order the defendant to pay the amount claimed. The magistrate may ask the plaintiff to present some evidence of the claim, even if the defendant is not present. If the plaintiff does not appear for trial and the defendant does appear, the court will enter a judgment for the defendant. If both the plaintiff and the defendant do not appear for trial, the claim will be dismissed.

12. HOW SHOULD I PREPARE FOR TRIAL?

It may be helpful to write down ahead of time the facts of the case in the order in which they occurred. This will help you organize your thoughts and make a clear presentation of your story. On the trial date, you must bring with you any witnesses, checks, bills, papers, photographs or letters that will help you prove your case. If you need a witness to come to court but the witness will not come, ask the Clerk-Magistrate's office for a witness summons which you must then arrange to have an officer deliver to the witness. You may need an expert witness to prove any matter not within common experience. The plaintiff must prove that the claim is one that the law recognizes and that the defendant is liable, or the magistrate will enter a decision for the defendant.

13. WHAT WILL HAPPEN ON THE DAY OF THE TRIAL?

Be sure to arrive on time. If your case is not resolved by a mediator, a trial will be held before a magistrate. The plaintiff will be asked to tell his or her side of the story, then the defendant will tell his or her side. Each will have an opportunity to ask questions of the other side and the other side's witnesses. To prevail, the law requires the plaintiff to prove the validity of his or her claim.

14. WHAT WILL THE MAGISTRATE DO?

The magistrate will make a decision. Notice of the decision (called a "judgment") will be given or sent to each side.

15. CAN I APPEAL THE MAGISTRATE'S DECISION?

By bringing a claim in small claims court, the plaintiff (and the defendant as to any counterclaim) gives up the right to have the claim decided by a jury and to appeal if he or she loses. If the defendant loses (or the plaintiff loses on any counterclaim) before the magistrate, he or she can appeal for a new trial by a judge or a jury of any disputed questions of fact, but must post a bond, unless that requirement is waived.