

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

Kimberly S. Budd
Chief Justice

-
1. Court Submitting Rules for Approval:

Trial Court

2. Date Rules Submitted for Approval:

October 10, 2024

3. Date Approved & Promulgated by the Supreme Judicial Court:

December 19, 2024

4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:

Proposed Amended Rules 7, 7A, 7B, 9 and 10 of Trial Court
Rule III: Uniform Small Claims Rules.

5. Effective Date:

February 3, 2025

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



**THE TRIAL COURT OF MASSACHUSETTS
EXECUTIVE OFFICE OF THE TRIAL COURT**

John Adams Courthouse
One Pemberton Square, 1M
Boston, MA 02108

Heidi E. Brieger
Chief Justice of the Trial Court

Thomas G. Ambrosino
Court Administrator

October 10, 2024

Supreme Judicial Court Rules Committee
John Adams Courthouse
One Pemberton Square
Suite 2500
Boston, MA 02108

Re: Proposed Amended Small Claims Rules

Dear Supreme Judicial Court Rules Committee:

Enclosed for your review and approval are proposed amended Rules 7, 7A, 7B, 9, and 10 of Trial Court Rule III: Uniform Small Claims Rules ("Rules"). The amendments are intended to ensure that courts do not inadvertently issue or enforce small claim payment orders that require debtors to pay using income or an asset that is exempt from collection under state or federal law, which was at issue in *Delisle v. Clerk-Magistrate of the Lowell Division of the District Court*, SJ-2017-0320.

The proposed amendments are the result of the work of the District Court Working Group on Debt Collection Procedures and the Trial Court Working Group on Small Claim Debt Collection Procedures, and comments submitted during a public comment period. The Trial Court Working Group was comprised of both internal and external stakeholders, which included representatives from the three Trial Court departments with small claim jurisdiction, and representatives from the Attorney General's Office, Northeast Legal Aid, the Massachusetts Access to Justice Commission Consumer Debt Working Group, the Massachusetts Bar Association, and three representatives of the debt collection bar.

To make the Rules clearer and more readily navigable, the Trial Court Working Group divided the revised content of Rule 7 into three separate Rules: Rule 7 (Trials, Hearings, and Judgments), Rule 7A (Payment Hearings and Orders), and Rule 7B (Conducting the Payment Hearing). A summary of the most significant proposed changes to the Rules are set forth below.

Proposed Rule 7: Trials, Hearings, and Judgments

Rule 7 addresses trials and the entry of judgments in small claims actions. It has been reordered for ease of understanding.

Proposed Rule 7A: Payment Hearings and Orders

The proposed revisions reflect significant changes to the process by which a court may issue a payment order following entry of judgment. Simply put, the court must always hold a payment hearing before issuing a payment order. Even where parties have agreed to a payment schedule and have further agreed

that a payment order should issue reflecting that agreement and payment schedule, an agreed-upon payment order will not issue unless both parties are before the court and the court has held a payment hearing. If the defendant is not before the court when judgment enters by agreement or by default, the court will generally schedule a payment hearing 30 days from the date judgment enters, or shortly thereafter.

Proposed Rule 7B: Conducting the Payment Hearing

Under the proposed revisions, the defendant must complete the new Statement of Finances and Income form prior to the payment hearing, irrespective of whether the hearing is contested, or the parties have agreed to a payment plan and the entry of an order. The information provided in the form is intended to assist the court in determining whether, if the defendant is a natural person, they receive exempt income, and whether the defendant has the ability to pay without relying on exempt income or assets. During the hearing, the court must inquire into the defendant's ability to pay without relying on exempt income.

The revisions make clear that the burden of proof is on the plaintiff to demonstrate the defendant's ability to pay. Following a payment hearing, the court must expressly find the defendant able to pay without relying on exempt income or assets, and where the defendant is unable to do so, or cannot do so without relying on exempt income or assets, the court will not enter a payment order. If the parties express an intent to enter into an agreement relying on exempt income or assets, the court will inform the parties that any such arrangement will not be accepted for filing, is not a court order, and will not be enforced by the court. This provision is intended to clarify for self-represented defendants that a private agreement to pay from exempt income is not a court order.

If, following a payment hearing, the court finds the defendant has the ability to pay and enters a payment order, the court must also inform the parties that either may at any time seek a review of the payment order based on changed circumstances, and that a failure to pay may result in an action to compel payment, such as by means of a contempt proceeding. In addition, where the order is based on an agreement of the parties, the court will also inquire as to the voluntariness and understanding of the parties to the agreement.

The proposed changes also amend the existing rule calling for issuance of a *capias* if a defendant fails to appear at the payment review hearing. The revision requires that a further payment review hearing be scheduled, and that notice be given to the defendant stating that failure to appear at the further hearing will result in the issuance of a *capias*. This notice must be served by an officer qualified to conduct service or by another means deemed appropriate by the court.

Proposed Rule 9: Enforcement of Judgments

The proposed changes to Rule 7 necessitate certain changes to Rule 9. Most significantly, to ensure consistency with Rule 7, Rule 9 no longer contemplates that a payment order issues if the plaintiff waived the right to a payment hearing. The proposed Rule also defines the contempt sanctions for failure to make payments under a payment order. Such a sanction will not be imposed unless: (i) the court has previously ordered the defendant to make payments on a judgment after a payment review hearing; (ii) the defendant has failed to make the ordered payments, and (iii) at the time that the order for civil contempt or sanction for contempt issues, the judge finds that the plaintiff has proven the defendant's ability to make the ordered payments on the judgment without relying on exempt income or assets.

Proposed Rule 10: Appeal

The suggested changes to Rule 10 are solely to ensure the accuracy of cross-references to Rules 7 and 9.

Public Comments

The proposed amended Rules were posted for public comment, and several individuals and entities submitted comments. The comments were reviewed, considered, and incorporated, where appropriate, into the proposed amended Rules. The public comments are attached.

Proposed New Forms

In conjunction with the proposed amendments to the Rules, the existing Agreement for Judgment and Payment Order form has been separated into two forms – the **Agreement for Entry of Judgment** form and the **Payment Order** form – underscoring the distinction between an agreement as to liability and an order to pay, and with the objective of reducing the risk of clerical errors resulting in unsanctioned payment orders. Additionally, the **Statement of Finances and Income** form has been simplified and is intended to be used as the basis for all payment orders of the court, whether as a basis for an agreed-upon order or a contested order. Finally, a new **Agreement for Proposed Payment Order** form is proposed to document any agreement for a payment order and must be filed with the court during a payment hearing with both parties present.

Thank you for the opportunity to propose amendments to certain of the Uniform Small Claims Rules to ensure uniformity and fairness in small claims matters across the Commonwealth. We look forward to promulgating the amended Rules and forms upon your approval.

Sincerely,



Heidi E. Brieger
Chief Justice of the Trial Court

Rule 7. Trials, Hearings and Judgments

- (a) **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, magistrates shall identify themselves 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.
- (b) **Conduct of Trials and Hearings.** 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.
- (c) **Continuances.** Where the defendant has been given notice as provided in these rules, trial shall not be continued to another date unless the court approves a written or oral motion of the parties for a continuance, or unless there is a showing of good cause. 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. The defendant's appearing ready for trial and requiring the plaintiff to prove his or her case is not such prejudice or good cause for granting the plaintiff a continuance.
- (d) **Plaintiff's Failure to Appear or Proceed to Trial.** 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, a judgment of dismissal shall be entered.
- (e) **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 may schedule a payment hearing. 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 the further inquiry or assessment of damages 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.
- (f) **Appearance as Substitute Counsel.** 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.

- (g) 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 or by electronic means the Notice of Judgment form.
- (h) Agreement for Judgment.** The parties may at any time file with the court, in person or by mail, an agreement for judgment on the Agreement for Entry of Judgment form promulgated by the court. The Agreement for Entry of Judgment form shall not include any reference to terms of payment of the judgment. If the agreement for judgment is filed on the required Agreement for Entry of Judgment form, the court shall enter the agreement as a judgment, unless justice would not be served. The court shall notify the parties that a judgment has been entered or, if judgment is refused by the court, the fact of and reason for such refusal.

Rule 7A. Payment hearing required.

- (a) **Where defendant is before the court when decision is announced.** If the decision of the court is for the plaintiff and the defendant has appeared and is before the court when the decision is announced, the court shall conduct a payment hearing on the same date the court announces its decision or at another established date before issuing any payment order. Should either party request a further date for purposes of providing documentation as to their financial statement, the clerk may grant a continuance.
- (b) **Where defendant is not before the court when decision is announced.** If the defendant is not before the court at the time of the decision or the defendant has not appeared, the court shall issue notice of its judgment. The notice of judgment shall not include a payment order. If the court issues a money judgment, the matter will be scheduled for a payment hearing thirty days from the date of judgment or shortly thereafter, unless: (1) the defendant timely appeals from the judgment, (2) the plaintiff waives the payment hearing, or (3) the plaintiff informs the court that the judgment has been satisfied. The plaintiff, or plaintiff's counsel, and defendant are required to appear in court for the payment hearing.
- (c) **Agreement for Payment Order.** Whenever the parties agree to a payment order, the court shall conduct a payment hearing. Any agreement for a payment order must be filed with the court during a payment hearing with both parties present. The court may not accept an agreement for payment order which is not recorded on a court-promulgated Agreement for Proposed Payment Order form, an agreement for payment order submitted by mail or electronically, nor an agreement for payment order submitted when all parties are not present. Whenever the court receives an agreement for payment order by mail, or which is otherwise not in compliance with this rule, the agreement shall not be accepted for filing with the court and shall be returned to the sender. The court shall notify all parties that the agreement has been rejected for failure to comply with the requirements of this rule.

Rule 7B. Conducting the payment hearing.

(a) Payment hearing.

- (1) Generally.** The court shall conduct a payment hearing before issuing any payment order, including circumstances where the parties present an Agreement for Proposed Payment Order. At the payment hearing, the plaintiff shall have the burden of proof, and the court shall make specific written findings of its determination as to the defendant's ability to pay. Additionally, the plaintiff must prove that the defendant has the ability to pay the judgment without relying on exempt assets or sources of income. Such review shall further include a consideration of the defendant's ongoing expenses when determining an ability to pay. The court shall require the defendant to complete a Statement of Finances and Income form, promulgated by the court and signed under the penalties of perjury. The 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.

Upon a finding that the defendant has an ability to pay without relying on exempt assets or sources of income, the court shall, except where justice will not be served, order payment to the plaintiff of the amount of judgment and costs, as the case may be, on or by a date stated or in specified installments. The court's decision shall be recorded on a Payment Order form and the court shall inform the parties of its decision.

Where parties bring to the court's attention that they intend to agree to a payment arrangement without involvement of the court, the court shall inform the parties that any such agreement is not a court order and will not be enforced by the court.

- (2) Hearing on agreement for proposed payment order.** In addition to determining defendant's ability to pay, where parties have agreed to a proposed payment order the court must determine that defendant has entered into the terms of the agreement voluntarily, and that the parties understand the terms of the proposed order.

If, after hearing, the court determines that the defendant is unable to pay as agreed but finds the defendant able to pay some amount less than the proposed agreed payment amount, the court may order the defendant to pay that lesser amount, so long as such payments do not include payments from exempt income or assets. The court's decision shall be recorded on a Payment Order form and the court shall inform the parties of its decision.

- (3) Defendant has no ability to pay.** If, after payment hearing, the court finds that the defendant has no ability to make payments on the judgment, or cannot do so without relying on exempt sources, the court shall not enter a payment order, and the parties shall be notified.

- (b) Failure of Defendant to appear at hearing.** If the defendant fails to appear at the payment hearing and it appears that the defendant received the notice of judgment and notice of payment hearing, and the plaintiff appears and states under oath, either orally or in writing under the penalties of perjury that the judgment has not been satisfied, prior to the issuance

of any *capias* and upon written request or motion, the court shall issue a Notice informing the defendant that failure to appear for a further payment review hearing can result in the issuance of a *capias*. The Notice will be sent to the plaintiff/judgment creditor, who must arrange for service 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.

- (c) **Payment review based on defendant's changed circumstances.** Whenever a payment order is issued, the court shall advise the parties that any party may ask the court to revise or vacate the order at any time based on a change to the defendant's financial circumstances.
- (d) **Notice of consequences for failure to pay as ordered.** Whenever an order is issued, the court shall inquire whether the parties understand the terms of the order, and the consequences of failing to comply with a payment order.
- (e) **Contempt.** The court shall inform the defendant that his or her failure to pay in accordance with a payment order, absent a material change in financial circumstances, may result in further action to compel the defendant to pay, including a contempt proceeding. A judge shall not enter an adjudication of civil contempt or any sanction for contempt based on the defendant's failure to make payments on a judgment unless (i) the court has previously ordered the defendant to make payments on a judgment after a payment review hearing, (ii) the defendant has failed to make the ordered payments, and (iii) at the time that the order for civil contempt or sanction for contempt issues, the judge finds that the plaintiff has proven defendant's ability to make the ordered payments on the judgment without relying on exempt income or assets.
- (f) **Costs.** If the decision of the court is for the plaintiff, the plaintiff's actual cash disbursements for the entry fee, surcharge, and electronic filing fees, 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.
- (g) **Acknowledgment of satisfaction of judgment.** Within 21 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 acknowledgement, the clerk shall recall any outstanding execution.
- (h) **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 judgment and refuses to do so, or that the present address of the plaintiff is unknown. The defendant shall accompany such affidavit with proof of payment of the full amount of the judgment, which may include canceled checks or money orders written by or on behalf of the defendant and made payable to and endorsed by

the plaintiff, 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. Bank or other asset account numbers should be redacted pursuant to Supreme Judicial Court Rule 1:24: Protection of Personal Identifying Information in Publicly Accessible Court Documents. Any docket notation made pursuant to this subsection shall establish a rebuttable presumption of full payment of the judgment.

Rule 9. Enforcement of Judgments

- (a) **Order to Show Cause.** On an order issued after the 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. The plaintiff 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.** After hearing, the court shall take such action, permitted by law, as it deems appropriate to enforce its payment orders. Such enforcement proceedings may be conducted either by a judge or 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, if the defendant is found to be in contempt, 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. A judge shall not enter an adjudication of civil contempt or any sanction for contempt based on the defendant's failure to make payments on a judgment unless (i) the court has previously ordered the Defendant to make payments on a judgment after a payment review hearing, (ii) the defendant has failed to make the ordered payments, and (iii) at the time that the order for civil contempt or sanction for contempt issues, the judge finds that the plaintiff has proven defendant's ability to make the ordered payments on the judgment without relying on exempt income or assets.
- (c) **Defendant's Move to Another District.** If, after 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.
- (d) **Execution.** Execution shall issue to the plaintiff upon written request after the payment hearing, or, where the judgment creditor has waived payment review hearing, by motion with service on all other parties, 30 days or more after 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 these rules, except that double satisfaction of judgments shall not be allowed. No execution may levy against exempt assets or income.

Rule 10: Appeal

(a) 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 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, the clerk shall schedule the matter for trial. 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 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 or she may have the issue of his or her 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 District Court and Boston Municipal Court departments. 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(c), 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(c), 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(c), a judgment dismissing the claim shall be entered forthwith if both the plaintiff and the defendant fail to appear for trial. Otherwise the judge must schedule a payment hearing in accordance with Rule 7A

in the division from which the case was appealed. In accordance with Rule 7B(a)(1), upon a finding that the defendant has an ability to pay without relying on exempt assets or sources of income, the court shall, except where justice will not be served, order payment to the plaintiff of the amount of judgment and costs, as the case may be, on or by a date stated or in specified installments. 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 re-transferred to the division from which it was appealed for any further enforcement proceedings pursuant to Rule 9, except that a case shall not be re-transferred 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.

**STATEMENT OF
FINANCES AND INCOME****MASSACHUSETTS TRIAL COURT****CONFIDENTIAL DOCUMENT**

DOCKET NO.

COURT DIVISION

PLAINTIFF(S) NAME

DEFENDANT NAME (if address has changed, please insert new address here)

DEFENDANT'S TELEPHONE NO.

DEFENDANT'S DATE OF BIRTH

NO. AND AGE(S) OF CHILDREN IN DEFENDANT'S HOUSEHOLD

The defendant must complete both pages of this form. If you have any questions about this form, please inform the Court.

SECTION 1 - WAGES1. I am currently employed. ☐ Yes ☐ No

Employer's Name: _____ Occupation: _____

Weekly Gross Wages: \$ _____ Weekly Gross Wages Subject to Attachment: \$ _____
If your weekly gross wages are \$750.00 or less your wages are exempt and you should write zero.***SECTION 2 - EXEMPT INCOME**

Some income and assets are exempt by law from court payment orders. The court cannot order the defendant to pay using exempt income or assets. A list of the most common sources of exempt income is provided below.

2. Check the appropriate box(es) if you receive income from the following sources:

- ☐ 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 (OASDI) (42 U.S.C. § 407)
- ☐ Supplementary Security Income (SSI) for Aged, Blind and 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 and Disabled (G.L. c. 117A)
- ☐ Veterans Benefits
 - Federal Veterans Benefits (38 U.S.C. § 5301[a])
 - Medal of Honor Veterans Benefits (38 U.S.C. § 1562)
 - Special Benefits for Certain WW II Veterans (42 U.S.C. § 1001)
 - State Veterans Benefits (G.L. c. 115, § 5)
- ☐ Transitional Aid to Families with Dependent Children (TAFDC) 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, cl. fifteenth)
- ☐ Payouts from any pension plan (G.L. c. 32, § 28)
- ☐ Other _____

SECTION 3 - OTHER INCOME

3. I receive the following income that is not included in my answers to the questions in Section 1 and or 2 above:

Wages Subject to Attachment

*The amount of weekly gross wages subject to attachment, execution or payment order is the lesser of 85% of the debtor's gross wages or 50 times the greater of the federal or the Massachusetts hourly minimum wage. G.L. c. 246, § 28. Therefore, if your weekly gross wages are more than the amount listed above, 15% of your excess wages are subject to attachment, execution or payment order. If you are unsure of how to calculate this amount please notify the clerk the day of the hearing.

SECTION 4 - EXPENSES

Rent/Mortgage (per month):	\$ _____	Other Itemized Expenses (if applicable):
Utilities (per month):	\$ _____	_____
Food (per month):	\$ _____	_____
Child Care (per month):	\$ _____	_____
Transportation (per month):	\$ _____	_____
Insurance (per month):	\$ _____	_____
Entertainment (TV/internet/phone) (per month):	\$ _____	_____
Other - list in box on the right - (per month):	\$ _____	_____
TOTAL MONTHLY EXPENSES:	\$ _____	_____

SECTION 5 - ASSETS**Real estate you own or own with someone else:**

Address:	_____	_____
Other Owner(s):	_____	_____
Mortgage Balance:	\$ _____	\$ _____
Fair Market Value:	\$ _____	\$ _____
Rental Income:	\$ _____	\$ _____

Vehicle(s)/Boat(s) you own or own with someone else:

Year/Make/Model:	_____	_____
Purchase Year:	_____	_____
Purchase Price:	\$ _____	\$ _____
Amount Owed:	\$ _____	\$ _____

Bank Accounts:

Bank/Credit Union:	_____	_____
Balance:	\$ _____	\$ _____

Expected Tax Refund: \$ _____

How much money do you have in cash? \$ _____

(Attach a separate list of anything of value not listed above that you own or co-own, or that is held for you by someone else)

SECTION 6 - DEBTS

Creditor	Nature of Debt	Date of Origin	Total Due	WEEKLY Payment
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Alimony/Child Support (per month): \$ _____

CERTIFICATION OF DEFENDANT

I certify that:

☐ I understand each section of this form; and ☐ I have completed this form accurately and truthfully

Before Signing: If you have questions about this form, you should speak directly with the clerk or judge for more explanation.

SIGNATURE OF DEFENDANT - SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY

DATE

Pursuant to Uniform Small Claims Rule 7B(a)(1), all information in this affidavit is **CONFIDENTIAL**. It shall be available to any other party in this litigation, but unavailable for public inspection unless the Court so orders.

Page 2 of 2

**SMALL CLAIMS
AGREEMENT FOR ENTRY OF JUDGMENT
ORIGINAL CLAIM**

**MASSACHUSETTS TRIAL COURT
SMALL CLAIMS SESSION**



DOCKET NO.

COURT DIVISION

PLAINTIFF(S) NAME

DEFENDANT(S) NAME (if address has changed, please insert new address here)

AGREEMENT FOR ENTRY OF JUDGMENT

ORIGINAL CLAIM

(If judgment is being entered on a cross claim, 3rd party claim or counter claim, parties should fill out and file separate Agreements for Entry of Judgment)

The parties in this case agree to the entry of judgment on the following terms:

☐ For the **DEFENDANT** - No damages to be awarded.

☐ Plaintiff(s)' claim(s) against _____ dismissed with prejudice. (Plaintiff(s) cannot later refile this claim.)

☐ Plaintiff(s)' claim(s) against _____ dismissed without prejudice. (Plaintiff(s) may refile this claim.)

☐ For the **PLAINTIFF**:

\$ _____ DAMAGES

\$ _____ COSTS

\$ _____ ATTORNEY FEES
(if authorized by
contract or statute)

☐ Plus PREJUDGMENT INTEREST from _____ at the
date (e.g. date of breach of contract)
12% statutory rate or the _____ % contractual rate. (circle one)

☐ Prejudgment interest is waived by the plaintiff(s).

☐ Postjudgment interest is waived by the plaintiff(s).

☐ Defendant stipulates to liability and requests payment review hearing.

☐ Agreement for Proposed Payment Order submitted.

☐ Parties request payment review hearing in the future.

☐ Defendant stipulates to liability and requests payment review hearing for assessment of ability to pay.

SIGNATURE OF PLAINTIFF(S) OR ATTORNEY/BBO NO.

PRINTED NAME OF PLAINTIFF(S) OR ATTORNEY/BBO NO.

DATE

SIGNATURE OF DEFENDANT(S) OR ATTORNEY/BBO NO.

PRINTED NAME OF DEFENDANT(S) OR ATTORNEY/BBO NO.

DATE

ORDER

This Court **ORDERS** that **JUDGMENT** in this action is:

☐ **TO BE ENTERED** according to the terms of the above Agreement for Judgment.

☐ **NOT TO BE ENTERED** for the following reason(s): _____

☐ **Other Orders:** _____

SIGNATURE OF MAGISTRATE/JUSTICE

DATE

THIS IS NOT A PAYMENT ORDER OR A JUDGMENT

**SMALL CLAIMS
AGREEMENT FOR PROPOSED PAYMENT ORDER**

**MASSACHUSETTS TRIAL COURT
SMALL CLAIMS SESSION**



DOCKET NO.	COURT DIVISION	PLAINTIFF(S) NAME
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DEFENDANT(S) NAME (if address has changed, please insert new address here)

AGREEMENT FOR PROPOSED PAYMENT ORDER

This form may not be submitted by mail. It may only be filed in court, with all parties present.

The parties in this case have reached the following PAYMENT AGREEMENT and request that it be issued as a COURT PAYMENT ORDER:

The current unpaid judgment amount is \$ _____

Defendant will pay to plaintiff (or other person authorized by plaintiff to receive payment) the total amount of \$ _____

☐ including post judgment interest

Check one:

☐ In one or more payment(s) to be made on or before _____ date

☐ In payments of \$ _____ ☐ weekly ☐ every two weeks ☐ monthly beginning on

_____ date until the full judgment amount stated above is paid.

☐ Comments or Instructions: _____

☐ This Agreement for Proposed Payment Order is being submitted with an Agreement for Entry of Judgment.

☐ This Agreement for Proposed Payment Order relates to a Judgment issued on _____ date

☐ The parties request a continuance date of _____ date

SIGNATURE OF PLAINTIFF OR ATTORNEY/BBO NO.

SIGNATURE OF DEFENDANT OR ATTORNEY/BBO NO.

DATE

CERTIFICATION OF DEFENDANT

- I understand and have completed the STATEMENT OF FINANCES AND INCOME form which is submitted with this Agreement for Proposed Payment Order.
- I understand that no payment should be made from exempt income and if my financial circumstances change such that payment is no longer possible or affordable that I may seek a modification of the payment order. I may at any time ask the court to CHANGE or VACATE the court order requiring me to pay.

SIGNATURE OF DEFENDANT

DATE

CERTIFICATION OF PLAINTIFF OR PLAINTIFF'S ATTORNEY

I certify that I have examined the defendant regarding the defendant's financial status and have reviewed the Statement of Finances and Income completed by the defendant. Based upon that examination and review, I certify to the court that it is my belief that the defendant has sufficient non-exempt income to satisfy the terms of this agreement.

SIGNATURE OF PLAINTIFF OR ATTORNEY/BBO NO.

DATE

**If this agreement is approved and ordered by the court, the court will complete a
Payment Order and make copies available to all parties**

**SMALL CLAIMS
PAYMENT ORDER**

**MASSACHUSETTS TRIAL COURT
SMALL CLAIMS SESSION**



DOCKET NO.

COURT DIVISION

PLAINTIFF(S) NAME

DEFENDANT NAME (if address has changed, please insert new address here)

PAYMENT ORDER

(Judgment must be entered in this case before the court may issue a payment order)

This Payment Order is pursuant to:

- ☐ A contested hearing
- ☐ A review of an Agreement for Proposed Payment Order
- ☐ After a hearing on a modification of an existing Payment Order
- ☐ The court finds that the defendant has the ability to pay without using exempt income.
- ☐ The court finds that the defendant has the ability to pay on the following terms.

The court **ORDERS** the defendant to pay to the plaintiff \$ _____ as follows _____

- ☐ The Court advised the Defendant that they may seek review of payment order at any time based on change in ability to pay.
- ☐ The Court advised the Defendant that a violation of the above payment order could result in a finding of contempt.
- ☐ Case continued for further hearing: Date: _____ Time: _____ Room No.: _____
- ☐ Defendant referred for judicial hearing re: possible finding of contempt.
- ☐ Further orders: _____

NO PAYMENT ORDER

The Court **DOES NOT ISSUE A PAYMENT ORDER.**

- ☐ Defendant has no ability to pay on judgment.
- ☐ Plaintiff(s) did not appear. No payment order issued.
- ☐ Defendant did not appear.

SIGNATURE OF MAGISTRATE/JUSTICE

DATE

PARTIES WILL BE NOTIFIED