

Rehearing, Appeal and Setting Aside Judgments in Virginia's General District Court

A discussion of:

- a discussion of rehearing and appeal;
- setting aside certain judgments; and
- a request for extension of time for the defendant to file a grounds of defense.

Rehearing and Appeal

In *Hamlet Condominium Assoc. v. Robinson*, 23 Va. Cir.186 (1991) the court said:
... the statutes provide aggrieved litigants two separate and distinct remedies in General District Court. One is to file a motion for a new trial in the General District Court pursuant to Virginia Code [§ 16.1-97.1](#). The other is to appeal to the circuit court and obtain a trial *de novo* pursuant to Virginia Code [§ 16.1-106](#).

Whatever option is chosen, be aware that there are *short* time limits (days) that must be obeyed, and the deadline for filing an appeal is not stayed awaiting the outcome of the request for a rehearing.

Rehearing

If you request a rehearing¹, you believe that you have a valid reason for the General District Court to re-evaluate the decision that granted judgment to the other party. A rehearing request is a motion to the court and must be filed within **30 days** following the date of the judgment.

See Virginia Supreme Court Rule [1:9](#). Discretion of Court. and Virginia Code [§ 16.1-93](#). Principles applicable to trial of cases, and [§ 16.1-97.1](#). When a new trial is granted.

The motion shall be **heard** by the General District Court within **45 days** after judgment (not including the date of entry of the judgment), and heard by the judge who rendered the judgment. This motion is generically referred to as a request to vacate a judgment, rehearing or request for reconsideration of judgment.

Time Limit

Again, the time to file a motion for a rehearing is **30 days** following the date of the judgment.

When to Consider a Request for a Rehearing

What are some of the common circumstance where you may consider a rehearing?

Defendant did not Appear

The defendant did not appear, the case was called, and the judge granted the plaintiff a **default** judgment.

Sample language for the Motion to Rehear:

1. Code of Virginia § 16.1-93. provides, in pertinent part: "The court may direct such proceeding and enter such orders as may be necessary to correct any such defects, irregularities and omissions, and to bring about a trial of the merits of the controversy and promote substantial justice to all parties."
2. The Defendant did not appear because:
3. The Defendant does not owe the total amount of the claim because:

The Losing Party Wants a Rehearing in GDC

Where one of the parties lost the case and wants a rehearing in General District Court.

Forms

Motion To Reopen (Criminal)/Motion To Rehear (Civil)/Motion For New Trial (Civil) [Form DC-368]

The Form DC-368 is multipurpose and includes a Motion to Rehear and a Motion for a new trial in a civil matter in General District Court.

Instructions for the Motion to Reopen (Criminal)/Motion to Rehear (Civil)/ Motion for New Trial (Civil) [Form DC-368]

The image shows a legal form titled "MOTION TO REOPEN (CRIMINAL TRAFFIC)/MOTION TO REHEAR (CIVIL) MOTION FOR NEW TRIAL (CIVIL)". It includes fields for "CITY OR COUNTY", "JURISDICTION", "STATE ADDRESS OF COURT", "DATE OF MOTION", "APPLICANT'S RESIDENCE", "NAME OF APPLICANT", and "TITLE OF APPLICANT". There are several checkboxes for "Criminal Traffic" and "Civil" motions, and a section for "Service on Respondent type required" with checkboxes for "Personal Service only", "Personal or Substantial Service only", and "Mailed or".

Appeal

An appeal to Circuit Court is a trial *de novo* (new) pursuant to Virginia Code §§ 16.1-106. Appeals from courts not of record in civil cases and 16.1-107. Requirements for appeal (as amended 7/1/07).

If the judgment was for the plaintiff, the defendant must file within the time limit and be prepared to file a bond and the filing fees **or** seek waiver of the bond and fees. Generally the bond, set by the judge, is the amount of the judgment. If the judgment is for the plaintiff, she/he will not have to pay a bond, but may have to pay the filing fees.

Go to the Clerk of Court and file the Notice of Appeal within **10 days** of the date of judgment. Thereafter you must and pay to the Clerk any bond, the writ tax and costs (unless waived) within **30 days** of the date of the judgment.

Time Limits

A notice of an appeal must be filed within **10 days** of the date **of the judgment**, and the appeal must be perfected (completed) within **30 days of the date of the judgment**.

Waiver of the Bond (Appeal GDC to Circuit)

Virginia Code § **16.1-107** was amended July 1, 2007, and the pertinent language reads as follows:

In all civil cases, except trespass, ejectment or any action involving the recovering rents, no indigent person shall be required to post an appeal bond.

Forms

Petition for Proceeding in Civil Case Without Payment of Fees or Costs [Form CC-1414]

Print the submission to Court Highlight Fees Clear All Data

PETITION FOR PROCEEDING IN CIVIL CASE WITHOUT PAYMENT OF FEES OR COSTS Case No. _____
COMMONWEALTH OF VIRGINIA

General District Court
 Juvenile & Domestic Relations District Court
 Circuit Court

v. _____

The undersigned petitioner(s) request the court to permit the petitioner(s) to sue or defend a civil case in this court without the payment of fees or costs and to have from all officers all beneficial services and process. In support of the petition, the petitioner(s) state that the following information is true:

- The undersigned petitioner(s) are Virginia resident(s).
- The following financial information applies to the petitioner(s):
 - Receiving public assistance No Yes-See items checked below
 Medicaid Supplemental security income TANF Food stamps
 - Take-home pay \$ _____ per week every second week
 twice a month month
 - Other income, if any (specify sources and amounts): _____
 - Assets: Cash on hand \$ _____ Bank accounts \$ _____
- Other information:
 - The number of people for whom the petitioner(s) provide support is: _____
 - The number of persons residing with the petitioner(s) is: _____
 - Complete if applicable:
In custody at _____

ACKNOWLEDGEMENT
I understand that the court cannot provide me with legal advice, and that it may be advisable to get advice from a lawyer:

DATE _____ SIGNATURE - PETITIONER _____
SIGNATURE - PETITIONER _____

NAME OF PETITIONER _____
ORDER

The petition is granted.
 The petition is denied.

DATE _____ JUDGE _____
FORM CC-1414 MASTER 1/09

Affidavit in Support of Application for Proceeding in Civil Case without Payment of Bond, Fees or Costs (GDC) (pdf)

The Petition Form CC-1414, a Virginia Official form, does not include exceptional expenses that some Virginia courts allow as deductions in calculating net income for poor-person relief in civil cases. LSNV prepared the above **Affidavit** that includes the exceptional expenses. It may be submitted as an alternative to the Petition where a local court permits and qualifying exceptional expenses exist.

Order for Petition or Affidavit for Proceeding in Civil Case without Payment of Bond, Fees or Costs (GDC & JDR) (pdf)

Setting Aside Judgments Outside the 30-Day Limit

A rehearing pursuant to Virginia Code § **8.01- 428** is based on a number of facts including.

- fraud on the court,
- void judgment,
- proof of an accord and satisfaction, and
- clerical mistakes.

Time Limits

Time limits for taking action on a request to set aside a judgment depend on the reason for the request. See Virginia Code § **8.01- 428**.

Motion To Reopen (Criminal)/Motion To Rehear (Civil)/Motion For New Trial (Civil) [Form DC-368] does not *Relieve a Party From Judgment* as it only pertains to Virginia Code [§ 16.1-97.1](#). See below:

move for a new trial in the civil case numbered _____ under Va. Code § 16.1-97.1. It has been thirty days or less since the date of judgment in this case.

Therefore a separate Motion, below, is needed.

Form

[Motion to Relieve a Party from Judgment and Order](#) (GDC) (pdf)

Defendant Failed to File a Timely Grounds of Defense

The defendant failed to timely file a court-ordered Grounds of Defense before the trial date. Prepare and include the proposed Grounds of Defense with this motion.

Sample language when the defendant requests additional time to file her/his Grounds of Defense:

1. Virginia Supreme Court Rule [1:9](#) provides, in pertinent part: "the time allowed for filing pleadings may be extended by the court in its discretion and such extension may be granted although the time fixed already has expired;"
2. On _____ the Court ordered the Defendant to file a Grounds of Defense to Plaintiff's claim on or before _____.
3. The Defendant did not timely file and serve a Grounds of Defense because:
4. Attached to this motion is a proposed Grounds of Defense.

Form

[Notice and Motion for Extension of Time to Serve and File a Grounds of Defense and Order](#) (GDC) (pdf)

Additional Information

What happens if the court denies the defendant an extension of time to serve and file the Grounds of Defense or the defendant fails to file the Grounds of Defense? The defendant may request, at trial to be permitted to cross examine the plaintiff and/or his/her witnesses on the amount of the *unliquidated* damages. See Virginia Supreme Court Rule [7B:9\(c\)](#).

Written by Laurence E. Fann lfann@lsnv.org March 2009.

ⁱ See [§ 16.1-93](#). Principles applicable to trial of cases.