



February 2015 Tip of the Month

Vacating Default Judgments in Hennepin County Conciliation Court

By Glen Drew, VLN Resource Attorney

INTRODUCTION

This tip is intended for use by volunteer attorneys who advise *pro se* parties at VLN's walk-in clinics. Volunteer attorneys who do not normally practice in Conciliation Court matters may be unaware that there are two different court processes for vacating default judgments entered in Hennepin County Conciliation Court. The information in this tip is not intended as legal advice or substitute for legal research.

The amount of time that has passed since entry of the default judgment is the determinative factor regarding which process applies. Since either party can appeal a Conciliation Court decision to District Court, judgments are stayed for a period of 20 days to allow time to appeal. For this reason, the process used to vacate a default judgment entered less than 20 days is a simple, *ex parte* process that does not require a hearing, quite unlike the process required when the default judgment has been entered more than 20 days.

Unlike in District Court cases where motions to vacate are decided pursuant to Rule 60.02 of the Minnesota Rules of Civil Procedure, motions to vacate in Conciliation Court are decided pursuant to Rule 520 of the General Rules of Practice for the District Courts, Conciliation Court Rules. The Conciliation Court Rules are often markedly different from the Rules of Civil Procedure. Included below are brief explanations of both processes and hyperlinks to the court forms. Step-by-step suggestions for how to draft motions to vacate default judgments that have been entered more than 20 days are also included.

I. VACATING A CONCILIATION COURT DEFAULT JUDGMENT WITHIN 20 DAYS

Conciliation Court Rule 520(a). Vacation of Order for Judgment Within 20 Days. When a default judgment or judgment of dismissal on the merits has been ordered for failure to appear, the judge within 20 days after notice was mailed may vacate said judgment order *ex parte* and grant a new trial on a proper showing by the defaulting party of lack of notice, mistake, inadvertence or excusable neglect as the cause of that party's failure to appear. Absolute or conditional costs not to exceed \$50.00 to the other party may be ordered as a prerequisite to that relief.

In Conciliation Court cases where the judgment was entered in the court within the past 20 days, the only form that needs to be completed are an Affidavit and Order Vacating Order for

Judgment and Granting New Trial which is available for downloading on the Minnesota Judicial Branch website at:

- <http://www.mncourts.gov/default.aspx?page=513&item=179&itemType=formDetails>.

Defendant clients who lost by default in Hennepin County Conciliation Court can fill out this form and take it to the [Signing Judge](#) (who is usually in room C757 on the 7th floor of the Hennepin County Government Center, 300 S. 6th Street, Minneapolis, MN 55487) and request that the judge grant the motion and sign the order to vacate. The order is *ex parte* so the Plaintiff does not have the ability to appear as there is no hearing. The Signing Judge may order the party seeking to the Order to pay \$50.00 to the other party, presumably to reimburse them for the costs of appearing at the initial hearing. The Conciliation Court will schedule a new hearing and mail notice of the hearing to both parties after the Order is filed and the appropriate fees and/or costs are paid.

II. **VACATING A CONCILIATION COURT DEFAULT JUDGMENT AFTER 20 DAYS**

Conciliation Court Rule 520(b). Vacation of Judgment After 20 Days. A default judgment may be vacated by the judge upon a proper showing by the defendant that: (1) the defendant did not receive the a summons before the trial within sufficient time to permit a defense and did not receive notice of the order for default within sufficient time to permit application for relief within twenty days after notice, or (2) upon other good cause shown. Application for relief pursuant to this Rule 520(b) shall be made within a reasonable time after the applicant learns of the existence of the judgment and shall be made within a reasonable time after the applicant learns of the existence of the judgment and shall be made by motion in accordance with the procedure governing motions in the district court except that the motion is filed with the court administrator of conciliation court. The order vacating the judgment shall grant a new trial on the merits and may be conditioned upon payment of absolute or conditional costs not to exceed \$50.00.

In Conciliation Court cases where the judgment was entered in the court more than 20 days in the past, a party may attempt to vacate a default judgment by filing a Notice of Motion and Motion and Affidavit that is also commonly referred to as a Special Term Motion. This one page form requires the party seeking to vacate a default judgment to explain why that party failed to appear at the original hearing and to state what defenses or claims that party has therefore lost the opportunity to present.

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| The following step-by-step considerations are relevant to the vast majority of motion to vacate cases seen at VLN clinics: |
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1. CHECK THE ONLINE COURT RECORDS TO CONFIRM THAT THE CONCILIATION COURT ENTERED A DEFAULT JUDGMENT MORE THAN TWENTY DAYS AGO.

- **Minnesota Trial Court Public Access (MPA) Remote View Website** – Go to <http://pa.courts.state.mn.us/default.aspx> and search the court records to find out when a default judgment was entered against the client.
- **NOTE: There May Be Two Separate Court File Number for the Same Claim** – Because there is not process for collecting on a judgment in Conciliation Court, anyone seeking to enforce a Conciliation Court judgment through collection action must “transcribe” the judgment from Conciliation Court to District Court. In the Fourth Judicial District in Hennepin County, all Conciliation Court case begin with 27-CO-...., and all District Court cases begin with 27-CV-.... This results in two different court file numbers being associated with the same action.
- **Find the date that the Conciliation Court entered judgment** – How the client goes about vacating the Conciliation Court judgment is based on the date that the Conciliation Court entered judgment against the client. The date that the transcript judgment was entered by the District Court is not important. If the date that the Conciliation Court entered judgment was more than twenty days ago then the client would have to file a special term motion in Conciliation Court to attempt to vacate the default judgment.

2. DETERMINE WHY THE CLIENT FAILED TO APPEAR FOR THE HEARING ON THE ORIGINALLY SCHEDULED DATE

- **Judgment is Void** – The client can argue that the default judgment is void because the Conciliation Court lacks jurisdiction over the client if the client was never served the Statement of Claims and Summons. The client may have been served in one of three ways depending on the amount in controversy:
 - i. **Plaintiff’s claim is \$2,500 or less** – The Conciliation Court administrator will summon the Defendant via first class mail if the amount of Plaintiff’s claim in \$2,500.00 or less. See Minnesota Rules of Practice-District. No Affidavit of Service is completed or filed with the court, and the only form of proof of service that is made is when the court administrator makes the appropriate notation in the court record of the date time, method, and address used by the administrator to effect service. See Conciliation Court Rule 508(d-e). (The Conciliation Court Rules are a subsection of the General Rules of Practice for the District Courts in the Minnesota Rules of Court).
 - ii. **Plaintiff’s claim is more than \$2,500; Service via Certified Mail** – The Plaintiff will have to serve the Defendant via certified mail and will have to file an Affidavit of Service with the Conciliation Court. See Conciliation Court Rule 508(d-e). (The Conciliation Court Rules are a subsection of the General Rules of Practice for the District Courts in the Minnesota Rules of Court).
 - iii. **Plaintiff’s claim is more than \$2,500; Personal or Substitute Service** – The Plaintiff may opt to serve the Defendant personally or effect substitute service pursuant to Minnesota Rule of Civil Procedure 4.03. However, this is rarely done in Conciliation Court cases due to the increased costs and inconvenience of hand delivering the Statement of Claim and Summons.

- **Judgment Should Be Vacated** – In the event that the Defendant was served and simply did not attend the hearing, arguments can be made explaining why the Defendant failed to appear despite having received the proper notice. Failure to appear might occur for any number of understandable reasons such as inability to speak or read the English language, physical or mental health issues, disability, or other emergency situations. Whether or not any of these example reasons are acceptable grounds for vacation is dependent upon the unique facts and circumstances of every case and up to the discretion of the referee.

3. DETERMINE WHETHER THE CLIENT HAS ANY DEFENSE(S) TO THE PLAINTIFF'S CLAIMS

- **Factual Defenses** – Depending on the case type, the client may have a factual defense. Review the facts of the case with the client. For example, in landlord-tenant disputes there may be a factual dispute over whether or not the tenant caused damaged to an apartment or whether the damage pre-dated the tenancy. In a negligence claim related to an auto accident, there may be a factual dispute over whether the client or the other motorist caused the accident.
- **Affirmative Defenses** – Clients often do not know what affirmative defenses are and cannot articulate affirmative defenses. For example, if the client was sued over a consumer debt by a debt buying company that claims to have purchased the client's delinquent account from the original creditor, the debt-buyer's claims may be barred by an invalid assignment of the debt because the debtor never received any notice of assignment of the debt and/or the debtor may not have any chain-of-title evidence to prove how it acquired the client's old account. See Minnesota Rule of Civil Procedure 8.03 for a list of other affirmative defenses:
- **Minn. R. Civ. P. 8.03 Affirmative Defenses**
In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on such terms as justice may require, shall treat the pleading as if there had been a proper designation.

4. COMPLETE THE NOTICE OF MOTION AND MOTION AND AFFIDAVIT FORM A/K/A THE SPECIAL TERM MOTION AND FILE IT WITH THE COURT.

- There is a one page court form called the Notice of Motion and Motion and Affidavit, also often called a Special Term Motion, that can be filed with the Hennepin County Conciliation Court to request that default judgment entered more than twenty days ago be vacated. This form is available on the Fourth Judicial District's website at: <http://www.mncourts.gov/district/4/?page=1824#Conciliation%20Court>

- Helpful instructions for drafting and serving the Special Term Motion are included with the form.
- After the Special Term Motion is filed with the court and the applicable \$70.00 filing fee is paid or waived, the Conciliation Court will schedule the matter for a motion hearing to be heard during a special term of the Conciliation Court. **Effective May 9, 2013**, the Special Term Motion calendar in Hennepin County Conciliation Court is now held on select Thursdays at 9:00 a.m. Contact the Conciliation Court at **(612) 348-2713 to confirm the next available hearing date.**

5. SERVE AND THE NOTICE OF MOTION AND MOTION AND AFFIDAVIT FORM A/K/A THE SPECIAL TERM MOTION.

- Together both the attorney and client should read the instructions provided by the court regarding service of process, which state:
 - 1) Copies of the Notice of Motion and Motion (and if applicable, Affidavit of Unfound Creditor) must be served upon each party named in the case.
 - 2) Service must be made by someone who is not a party to the action and is at least 18 years of age. All named parties must be notified of the Motion hearing and must be sent a copy by mail at least 17 days before the hearing date, or served personally at least 14 days before the hearing date. **REMEMBER**, this paperwork cannot be personally served on a Legal Holiday.
 - 3) The person serving the paperwork must fill out the appropriate Affidavit of Service, and sign it in front of either a Court Clerk or Notary Public.
 - 4) The completed original Notice of Motion and Motion and Affidavit of Service must be returned a minimum of 7 days before the scheduled hearing date. If you do not serve and file timely, your hearing may be cancelled. You must also include the \$70.00 filing fee, if you have not previously paid the filing fee.

6. ADVISE THE CLIENT WHAT TESTIMONY AND EVIDENCE TO PRESENT AT THE SPECIAL TERM HEARING

- The Conciliation Court does not allow evidence to be attached to the Motion and Affidavit as an exhibit so any evidence that the client may want to present regarding a failure to appear and/or a defense on the merits needs to be brought to the hearing for presentation to the judge and other party.
- Clients should be advised that Conciliation Court is not a court of record so they should be sure to retain their original evidence and not to leave it at the courthouse or give it to the other party. Clients should bring photocopies or reproductions to exchange.
- Clients should be advised to dress in business casual attire and to arrive on time.
- Clients should also understand that the purpose of the hearing is for them to present their testimony and evidence to the referee, not to argue with the opposing party. Clients should be advised to address the referee directly at the hearing and not the opposing party.