



February 2016 Tip of the Month

How to Appeal a Contested Conciliation Court Judgment to District Court in Hennepin County

Submitted by Glen Drew, VLN Resource Attorney

Volunteer Lawyers Network has several clinics that assist low income clients and pro se parties with Conciliation Court matters. Several considerations apply when advising clients whether and how to appeal a Conciliation Court judgment to District Court. The following outline is intended as starting point for assessing these considerations and other considerations may also apply. This tip is not legal advice, and it not a substitute for legal advice.

HOW TO APPEAL A CONTESTED CONCILIATION COURT JUDGMENT TO DISTRICT COURT IN HENNEPIN COUNTY

I. DID THE CLIENT ATTEND A CONTESTED HEARING?

- a. A Plaintiff may attempt to vacate a dismissal with prejudice or a Defendant may attempt to vacate a default judgment after failing to appear at a Conciliation Court hearing.**
- In Hennepin County, Plaintiffs who fail to attend a Conciliation Court hearing can attempt to vacate a dismissal with prejudice. In order to be successful, the Plaintiff will likely need a very compelling reason for failing to appear as he/she cannot claim lack of notice as can a Defendant.
 - In Hennepin County, Defendants who fail to attend a Conciliation Court hearing may be able vacate the default judgment by filing a Special Term Motion.
 - See the Special Term Motion instructions and forms available at <http://www.mncourts.gov/Find-Courts/Hennepin.aspx#Conciliation>

II. DETERMINE THE DEADLINE FOR FILING AN APPEAL TO DISTRICT COURT AND ADVISE CLIENT OF IMPORTANCE OF MEETING THE DEADLINE.

- a. Check the Order for Judgment on Claim and/or Counterclaim for the deadline by which an appeal must be filed.**
- Either party may appeal the Conciliation Court's judgment to District Court for a trial de novo if the appeal is made in good faith.

- The Order for Judgment on Claim and/or Counterclaim form is usually mailed out by the Conciliation Court on the date of the hearing to inform the parties of the referee’s decision regarding who won and who lost. Most referees will not rule from the bench and will inform the parties that the matter is being taken under advisement.
- The bottom portion of the Order for Judgment on Claim and/or Counterclaim form just above the Court Administrator’s signature contains a notice section that states:
 - “**NOTICE: THE PARTIES ARE NOTIFIED** that Judgment has been entered as indicated above, but the Judgment is stayed by law until ____[a specified date]____ (to allow time for an appeal/removal if desired).
THE PARTIES ARE FURTHER NOTIFIED that if the case is removed to District Court and the removing party does not prevail as provided in Rule 524 of the Minnesota General Rules of Practice for the District Courts, the opposing party will be awarded \$50 as costs.”

III. DETERMINE WHETHER THE CLIENT HAS MERITORIOUS APPEAL

a. An appeal must be made in made in good faith and not for the purpose of delay.

- A Plaintiff must have a valid claim or a Defendant must have a reasonable defense in order to file an appeal.
- Some clients who are angry with the outcome of their case may not realize that they lost for a valid legal reason and thus have no basis for appealing. This may be particularly true for clients who are convinced that they were treated unfairly or rudely by the opposing party. Explaining that results that may seem unfair or rude are nonetheless completely legal may often be helpful when advising a pro se party or pro bono client.

IV. DETERMINE WHETHER THE POTENTIAL BENEFITS OF APPEALING THE CASE ARE WORTH THE COSTS OF FILING THE APPEAL AND LITIGATING IN DISTRICT COURT.

a. Can the client pay the \$324.00 District Court filing fee or qualify for a fee waiver?

- If the value of the client’s claim is commensurate with or less than the cost of the District Court filing fee, the client may be better off cutting his/her losses if he/she is a Plaintiff or paying the judgment if he/she is a Defendant though other considerations may apply (e.g., credit worthiness, ability to obtain housing, etc.).
- Even if the client qualifies for a fee waiver from the District Court, practical considerations regarding cost should be a consideration.
- If the client cannot afford to pay the \$324.00 District Court filing fee, the fee waiver forms, (Affidavit for Proceeding In Forma Pauperis, Order for Proceeding In Forma Pauperis, and instructions) are available at

www.mncourts.gov/Help-Topics/GetForms.aspx?cat=Fee+Waiver+-+In+Forma+Pauperis

- A party seeking to obtain a fee waiver order, must meet the eligibility criteria in [MINN. STAT. § 563.01](#).
- In Hennepin County, the Signing Judge reviews the completed Demand for Removal, Affidavit for Proceeding Informa Pauperis, and Order for Proceeding In Forma Pauperis and determines whether the fee waiver applicant meets the criteria required for the Court to issue an Order for Proceeding In Forma Pauperis.
- The Signing Judge is available for most case types **Monday - Friday, 9:00 a.m. - 12:00 noon and 1:30 p.m. - 4:15 p.m.** in **Room #C-757** on the 7th floor of the Courts Tower of the Hennepin County Government Center, 300 S. 6th Street in downtown Minneapolis.

b. Mandatory Costs in District Court

- See Rule 524 of the Conciliation Court Rules (which are a subset of the [General Rules of Practice for the District Courts](#)) regarding the possible mandatory imposition of \$50.00 in additional costs upon the appealing/removing party if he or she is not the prevailing party in the District Court proceeding.

c. Indirect/Hidden Costs to the Appealing Party Resulting from Further Litigation

- Once the case is removed to District Court, the parties may be ordered to participate in mediation and must appear in person if ordered to do so. The Court has a free mediation program for cases that involve at least one pro se party who obtained a fee waiver.
- If no settlement is reached, both parties will have to appear at trial and may be required to file multiple documents before trial such as an Exhibit List, Witness List, Trial Memorandum, and Proposed Findings of Facts, Conclusions of Law, and Order.
- Time off work – Depending on the value of the claim and how much the client makes, taking time off from work to appear at mediation, file documents, and appear at trial may not be cost effective.
- Other Costs – If applicable, child care costs, transportation, and parking costs should all be taken into consideration when considering whether to appeal.

V. COMPLETE, SERVE, AND FILE THE DEMAND FOR REMOVAL/APPEAL FROM CONCILIATION COURT TO DISTRICT COURT AND AFFIDAVIT OF GOOD FAITH WITH THE APPLICABLE FEE OR FEE WAIVER ORDER

- a. Complete the Demand For Removal/Appeal from Conciliation Court to District Court and Affidavit of Good Faith. The form and helpful instructions are available at <http://www.mncourts.gov/Help-Topics/GetForms.aspx?cat=Conciliation+-+Small+Claims+Court>

- b. Completing the Demand for Removal form is not complicated. The only significant decision for the appealing party to make when completing the form is whether he/she would like a judge or jury to preside over the new trial (trial de novo). Most pro se parties will find it easier to prepare for a bench trial than a jury trial.
- c. The completed Demand for Removal form must be served by an individual who is at least 18 years of age and not a party to the action. The person who served the Demand for Removal must sign an Affidavit of Service form.
- d. *No Notarization Requirements* – There is no longer any notarization requirement and the appealing party or person who served the Demand for Removal need only declare “I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116” in writing directly above the signature block on those forms.
- e. File the Demand for Removal and Affidavit of Service forms along with the applicable fee waiver order or \$324.00 filing fee in room 306 at the Conciliation Court on the 3rd floor of Minneapolis City Hall, 350 S. 5th Street in downtown Minneapolis.

VI. PLEADINGS IN DISTRICT COURT

- a. **Amendment of the Pleadings Within 30 Days** – Pursuant to Conciliation Court Rule 522, any party may amend his/hers statement of claim or counterclaim if, within 30 days after removal is perfected, the party seeking the amendment serves on the opposing party and files with the court a formal complaint conforming to the Minnesota Rules of Civil Procedure. If the opposing party fails to serve and file an answer within the time permitted by the Minnesota Rules of Civil Procedure, the allegations of the formal complaint are deemed denied.
- b. **Amendment of the Pleading After 30 Days** – Pursuant to Conciliation Court Rule 522, amendment of the pleadings at any other time shall be allowed in accordance with the rules of civil procedure.

If you have any questions regarding this tip or would like to help low-income clients with their civil law needs or learn more about VLN clinics, please contact VLN Resource Attorney Glen Drew at (612) 752-6659 or via email at glen@vlmn.org.