



Tip of the April 2024

How to Vacate Default Judgements in Conciliation Court

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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 Conciliation Court. 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 21 days to allow time to appeal. For this reason, the process used to vacate a default judgment entered less than 21 days is a simpler, *ex parte* process that does not require a hearing. Unlike in District Court cases where motions to vacate are decided pursuant to Rule 60.02 of the Minnesota Rules of Civil Procedures, 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 remarkably different from the Rules of Civil Procedure and are included below as 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 21 days are also included.

DISCLAIMER: Nothing in this Tip of the Month is intended to be legal advice or a substitute for legal research. Please note that this Tip is intended to provide a general overview of vacating default judgments entered in Conciliation Court in Minnesota, and procedures and names of forms used may vary from judicial district to judicial district. Please check with the applicable court administrator to confirm what applicable procedures should be filed and forms used.

I. VACATING A CONCILIATION COURT DEFAULT JUDGMENT WITHIN 21 DAYS

Conciliation Court Rule 520(a) Vacation of Order for Judgment Within 21 Days. *When a default judgment or judgment of dismissal on the merits has been ordered for failure to appear, the judge within 21 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 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 21 days, the only form that needs to be completed are a Request to Vacate Order for Judgment and Granting New Trial (form CCT504), which is available to download from the Minnesota Judicial Branch website at: mncourts.gov/GetForms.aspx?c=10&f=182

The order is *ex parte*, so the Plaintiff does not have the ability to appear or contest as there is no hearing. The 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 21 DAYS

Conciliation Court Rule 520(b) Vacation of Judgment After 21 Days. *A default judgment may be vacated by the judge upon a proper showing by the defendant that: (1) the defendant did not receive 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.*

In Conciliation Court cases where the judgment was entered in the court more than 21 days in the past, a party may attempt to vacate a default judgment by filing a Notice and Motion to Vacate Conciliation Court Judgment after Deadline. This short 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. The following step-by-step considerations are relevant to the vast majority of motion to vacate

cases seen at VLN clinics. The Motion forms can be downloaded from the Minnesota Judicial Branch website at: mncourts.gov/GetForms.aspx?c=10&p=161

1. **Check the online court records to confirm that the conciliation court entered a default judgement more than twenty-one days ago.**

- **Minnesota Court Records Online (MCRO) Website** – Go to publicaccess.courts.state.mn.us 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 numbers for the same claim – Because there is not a process for collecting 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 cases 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 must file a Notice and Motion to Vacate Conciliation Court Judgment after Deadline 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 default judgment is void because the Conciliation Court lacks personal jurisdiction over the client if the client was never served the Statement of Claims and Summons. This defense is straightforward where the client can show that he or she did not reside at the address served by the plaintiff. This defense is more problematic where the defendant resided at the address but believes another person residing there received the Statement of Claim and Summons and didn't pass it on to the defendant. The client may have been served in one of three ways depending on the amount in controversy:
 - **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 is \$2,500.00 or less. No Affidavit of Service is completed or filed with the Conciliation Court by the plaintiff, 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).

- **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).
- **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 emergency situations. Whether or not any of these 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.**

In addition to a Notice and Motion to Vacate Conciliation Court Judgment After Deadline form, the client will need to complete, serve, and file an Affidavit in Support of Motion to Vacate a Conciliation Court Judgment After Deadline. In this supporting affidavit, the client is asked to explain why the client believes that they have good cause for the court to vacate the judgment entered against the client. If the client has any factual or affirmative defenses to the plaintiff's claim that the client would have presented at the original hearing, it would be a good idea to mention these defenses here so the court knows that the client has some factual and/or legal basis for contesting the underlying claim.

- **Factual Defenses** – Depending on the case type, the client may have a factual defense. For example, in landlord-tenant disputes, there may be a factual dispute over whether or not the tenant caused damage 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 accord and satisfaction, discharge in bankruptcy, the statute of limitations, etc. See Minnesota Rule of Civil Procedure 8.03 for a list of other affirmative defenses.
 - **No Defenses** - If the client has no defenses, it is a waste of time and money to vacate the judgment.
4. **Complete and serve the Notice and Motion to Vacate Conciliation Court Judgement After Deadline and the affidavit in support of Motion to Vacate Conciliation Court Judgement After Deadline, then file both with the court.**

The Minnesota Judicial Branch website has a packet of forms that can be downloaded at mncourts.gov/GetForms.aspx?c=10&p=161 that contains the following forms:

- Instructions - Vacate Conciliation Court Judgment after 21-Day Deadline Has Passed
- Notice and Motion to Vacate Conciliation Court Judgment after Deadline
- Affidavit in Support of Motion to Vacate Conciliation Court Judgment after Deadline
- Affidavit of Service by Mail

Together, both the attorney and client should read the instructions provided by the court regarding completion of the required forms, service of process, and filing, which can be found at mncourts.gov/mncourtsgov/media/CourtForms/CCT505.pdf?ext=.pdf. Most clients are able to follow these instructions on their own after reviewing them with an attorney who can answer any questions they may have. After the motion and accompanying required forms are filed with the court and the applicable filing fee is paid or waived, the Conciliation Court will schedule the matter for a motion hearing to be heard.

5. **Advise the client on what testimony and evidence to present at the hearing.**

The Conciliation Court does not allow evidence to be attached to the Motion 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 or sent in pursuant to the court's instructions if the hearing will be held remotely. Contact your local Conciliation Court Administrator to find out how the court is holding motion hearings.

- A court reporter may not take official notes of any trial or proceedings in conciliation court pursuant to Minn. Stat. § 491A.93, subd. 3. Clients should be advised that because the Conciliation Court is not a court of record the client should be sure to retain their original evidence and not to mail it to the court, leave it at the courthouse, or give it to the other party. Clients should send in or bring photocopies or electronic reproductions to exchange.
- Clients should be advised to dress in business casual attire and to arrive on time whether in-person or via Zoom.
- Clients should also understand that the purpose of the hearing is for them to present their testimony and evidence to the referee or judge regarding why the default judgment should be vacated, not to argue with the opposing party. Clients should be advised to address the referee or judge directly at the hearing and not the opposing party.