

District of Columbia Debt Collection Laws

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Overview of the District of Columbia Court Structure

To understand collections law and practice in Washington, D.C., it is necessary to remember that the District of Columbia was established as the seat of the national government by the U.S. Constitution from an original ten square mile tract along the Potomac River, taken from the State of Maryland and the Commonwealth of Virginia. The Virginia parcel located west of the Potomac (now Arlington and Alexandria, Virginia) was ceded back to Virginia before the Civil War. Accordingly, the District's jurisprudence has been historically influenced by developments of the law in Maryland. The jurisdiction in one form or another has been governed by Congress. As such, the federal court in Washington, the United States District Court for the District of Columbia, served as the local court in most civil and criminal matters.

In 1972 Congress created a Charter that grants the City limited Home Rule. Congress created the elected Office of Mayor as an executive branch, an elected City Council as the Legislative Branch and a judicial branch consisting of the Superior Court of the District of Columbia and the Court of Appeals for the District of Columbia (as distinguished from the United States Court of Appeals for the District of Columbia Circuit). The Superior Court and the D. C. Court of Appeals function like state courts while the federal courts in D.C. have assumed the traditional limited jurisdiction of other federal courts. The judges of the Superior Court and D. C. Court of Appeals are appointed to 15 year terms by the President of the United States, and the local United States Attorney's office carries out the function of state prosecutor. So if a creditor is harmed by some type of criminal conduct, the United States Attorney's Office is generally the only place to go to seek criminal sanctions. The Superior Court is a single court divided into Civil, Criminal, Family, Probate and Tax Divisions, and a Small Claims and Conciliation Branch of the Civil Division. It has only one location. The Rules of Civil Procedure in the Superior Court are for the most part the same as the Federal Rules of Civil Procedure in number and content.

Small Claims Practice

The Small Claims and Conciliation Branch has exclusive jurisdiction in civil cases for claims of \$5,000.00 or less, exclusive of interest and attorney's fees. The Small Claims Branch is a Magistrate's Court with no equity jurisdiction, the Magistrate being appointed by the judges of the Court. Civil litigants may opt out of the Magistrate's Court and demand a jury before a judge of the Court. To the uninitiated, the process of bringing a collections or subrogation case to trial in Small Claims can be very frustrating. The Clerk requires meticulous adherence to the form of complaint, called a "Statement of Claim." The Statement of Claim must be signed before a notary by a creditor's representative, whose title must be noted. The Statement of Claim must also be signed by the creditor's attorney before a notary or the Clerk of Court. If the debtor is a corporation, an agent for the corporation with address must be listed on the complaint form. In addition, before a creditor's attorney uses a special process server in a Small Claims action, the Clerk must approve the individual server in advance. Many a case has been thrown off the docket for failing to obtain this advance approval in a Small Claims case.

There are supplemental Rules that govern Small Claims practice. Everything in Small Claims is done in open court, requiring attendance by creditor's counsel. That means that every filing or motion must be set down for a hearing date when it is filed. When a Statement of Claim is filed, it is set down for an Initial Hearing which must be a date no longer than thirty days from the date of filing. The plaintiff must serve the defendant and, under current practice, file the proof of service on the defendant seven calendar days before the Initial Hearing date. If the defendant is not served, or if the proof of service is not timely filed, the case is taken off the docket, and plaintiff's counsel must obtain an alias summons with a new Initial Hearing date. The potential for frustration is evident; unless the Initial Hearing date and service of process are coordinated and accomplished within thirty days, the practitioner is required to send someone to the Clerk's office at least twice. In addition, service of process must be accomplished within 180 days of filing of the complaint, or the Clerk will dismiss the Statement of Claim without prejudice. To avoid dismissal a motion for extension of time to serve must be filed before the expiration of this 180 day period. There is no discovery in Small Claims without leave of court. When the defendant is finally brought before the Small Claims Court at the Initial Hearing, a mandatory mediation before a professional mediator is conducted at no cost. In theory, if mediation fails, the trial is held that day. But for collection and subrogation, cases the Small Claims Court currently sets each Wednesday aside as a "collections day" for Initial Hearings. If mediation fails, trial is set for another date, by which both sides should have their witnesses ready for trial.

Filing fees for Small Claims are \$5.00 for a claim less than \$500.00, \$10.00 for a claim between \$500.00 and \$2,500.00, and \$45.00 for claims between \$2,500.00 and \$5,000.00. In addition, a \$5.00 fee for approval of the special process server applies to each category of claim.

Appeals from Small Claims judgments are a matter of right and are made to a sitting judge in the Superior Court. Traditional appellate standards apply. An appeal from that judge's ruling to the D.C. Court of Appeals is not automatic. The Court of Appeals rarely hears appeals from cases originating in Small Claims.

Collections Practice Above the Small Claims \$5,000.00 Limit

For collections and subrogation cases above \$5,000.00, the Superior Court has established another Magistrate's Court with no equity jurisdiction, generally referred to as Calendar 18. Most collections practitioners use Calendar 18, because it is designed for simple collection and subrogation cases, with a correspondingly streamlined litigation schedule. There are no required hearings in Calendar 18 until the defendant is served. When service is accomplished, both parties are summoned to a Scheduling Conference, at which time limited discovery and motions deadlines are set along with a trial date, usually about four months off. So theoretically, only two appearances are required in Calendar 18 after service of process, once for the Scheduling Conference and then for the mediation and trial. Although the discovery period is limited, written and oral discovery are allowed under rules which are virtually the same as the federal rules.

On the day set for trial, mandatory mediation is held before a professional mediator. Unlike Small Claims, if mediation fails, the parties should expect to proceed to trial before the Magistrate Judge in Calendar 18 on the scheduled trial date. Like the Small Claims Court, service of process must be accomplished within 180 days of filing of the complaint in Calendar 18. No advance approval of the process server is required. If there is no service within that time period, the Clerk will dismiss the case without prejudice, unless a motion for extension of time to serve is filed before the expiration of the 180-day period.

The filing fee for a Calendar 18 case is \$120.00. However, the effective cost of filing in Calendar 18 is a lot higher, because electronic filing is mandatory in Calendar 18 after the complaint is filed. There is an e-filing surcharge for every filing made in Calendar 18. For some filings, like motions, there are filing fees. For example, the motions fee is \$20.00. But the e-filing surcharge is about \$18.00. So the effective filing fee is \$38.00 for a motion. Even for simple instructions to the Clerk, which are called "praecipis," and which must be made in writing, there is a surcharge of about \$15.00, even though there is no filing fee for the praecipe. These electronic filing surcharges add up.

Collection practitioners should be aware that, for defendants residing within the District of Columbia who are evading service, there is no procedure in the Superior Court for alternate service or service by publication. This can mean -- and sometimes does mean -- that cases must be abandoned, because the Magistrate Judges will extend the time to serve only if the motion provides a detailed explanation of what plaintiff's counsel has done and intends to do in order to serve the defendant, and if "exceptional

circumstances” warrant an extension of time. The latter standard is subject to the discretion of the judge, but the motion must provide a factual basis for exercise of that discretion. For an individual defendant living outside of the District of Columbia, the Court will accept any method of service, and entertain motions for alternative service, if such method of service is allowed in the state in which the defendant resides.

The Superior Court has subpoena power, but only within a twenty-five (25) mile radius of the Court. For subpoenas that must be served beyond 25 miles, a cumbersome and expensive process under which the movant’s attorney is granted a “commission” to conduct an examination under the subpoena is followed. Appeals from the Magistrate Judge’s final rulings in Calendar 18 are taken as a matter of right to the Chief Judge of the Superior Court. But unlike Small Claims, appeals from that judge’s final rulings are taken as a matter of right to the D. C. Court of Appeals.

An Outline of The District of Columbia Collection Law

1. Statute of Limitations

The Statute of limitations in the District of Columbia for open accounts and writings, such as contracts and promissory notes, is three (3) years from the date of breach. Generally, a renewed promise that can be proved to pay an old debt renews the limitations period. The limitations period for a minor does not start to run until the minor reaches majority.

The limitations period for a contract signed under seal in the District of Columbia is 12 years.

Domestic judgments and judgments domesticated in the District expire in 12 years from the date of issuance and can be renewed for a similar period without difficulty.

2. Bad Check Laws

The drawer of a dishonored check in the District of Columbia may be charged with a crime and pursued civilly.

3. Criminal Penalties

If the dishonored check is \$100 or more, the drawer may be found guilty of a felony and fined not more than \$3,000 or imprisoned for not less than 1 year and no more than 3 years, or both; if the amount of the check is less than \$100, the drawer can be found guilty of a misdemeanor and fined not more than \$1,000 or imprisoned not more than 180 days, or both.

4. Civil Penalties

The holder of a bad check may sue the drawer for the amount due plus protest fees.

5. Garnishments

District of Columbia law provides for writs of garnishments issued by the Small Claims or Superior Court (including Calendar 18) on wages and property. In addition, property of a judgment debtor in theory may be seized by the United States Marshall and sold. The garnishee must be served with the writ. Post judgment writs on wages and bank accounts do not require posting of a bond, although there are significant costs associated with an attempt to seize and sell real property to satisfy a judgment. Generally, the garnishee must withhold 25% of the net wages of the debtor and all of the property in a bank account that is the equivalent of the judgment amount, even in a joint account (but this is subject to challenge). The garnishee identifies such property in its interrogatory answers. If the garnishee does not answer and permits property of the defendant that may be attached or wages to be withdrawn from its possession, the creditor may seek judgment against the garnishee for the value of the property withdrawn.

As noted, property may be seized by the United States Marshall under the Superior Court Civil Rules. In practice, however, it is very difficult to arrange for the Marshall to seize assets.

The defendant or garnishee may answer the writ by claiming exemptions authorized by law.

For wage garnishments, the debtor may claim for exemption the greater of 75% of the debtor's disposable wages or 30 times the federal minimum hourly wage in effect at the time of the garnishment, plus any amounts required to be withheld by law from the employee's wages.

For bank garnishments, no funds may be garnished for an account that consists solely of direct deposit benefits that are exempt from federal or DC law, including Social Security, SSI, SSDI, Veterans benefits, Civil Service Retirement, Black Lung, Railroad Retirement, Disability, Unemployment, Public Assistance/TANF benefits and Worker's Compensation.

D.C. exempts the following from seizure by a bankruptcy court: the full value of a property which is a residence; three months' worth of food and fuel; clothing, motor vehicle, books and family pictures, beds, bedding, radios, cooking utensils, stoves, furniture, furnishings and sewing machines, business inventory and materials, cooperative association holdings, library, furniture, tools of the professional or artist, mechanic's tools and tools of a trade or business, and other miscellaneous items, each up the statutory limit. In addition certain insurance benefits, disability benefits, group life and life insurance policy or proceeds, if the policy prohibits proceeds from being used to pay creditors, unemployment compensation, workers' compensation, aid to blind,

aged, disabled, and families with dependent children, general assistance, and crime victims' compensation are also exempt.

6. Licensing, Bonding and Other Regulations

The District of Columbia requires each entity actually conducting a business in the District to get a General Business License from the D.C. Department of Consumer and Regulatory Affairs. The cost for applying for such a license is \$75.00. The biannual fee for the license is \$200.00. The District of Columbia does not require a special license for Collection Agencies.

7. Post-Trial Filing Fees and Service of Process Costs

Filing fees in the Superior Court are noted above. The fees for post-trial writs are generally \$20.00 and must be filed by hand using a court multi-copy carbon form.

The costs for service of process in the District range generally from \$75.00 to \$100.00 per service. Service of process in the Superior Court is not available through the U. S. Marshall Service.

8. Debtor Exams

The Superior Court allows all forms of post judgment discovery including debtor's exams which may be scheduled by issuance of a subpoena with a date for the examination prearranged with the Clerk. The Court is fairly accommodating in allowing such exams to go forward.

9. General Practice Relating to Collection Law in The District of Columbia

Generally, the Superior Court judges are keen to protect the procedural rights of debtors in collection cases. While there are no special rules of pleading in collection cases, the judges on the court are requiring detailed proof of "chain of title" for the debt before a judgment is entered, whether or not there is a defense to the claim. In addition, there are no formal rules governing evidence in the Superior Court, only rules established by case law. Accordingly, litigants cannot use sworn-to certificates to introduce business records without a live witness, unlike the federal and Maryland state courts. In addition, some practitioners would argue that the judges arbitrarily cut prejudgment interest rates in collection cases. As to attorney's fees, the Small Claims court limits recovery to 15% of the claim. Absent unusual circumstances, the judges in the Civil Division, including Calendar 18, lately have been limiting award to the Small Claims maximum of \$750.00. Thus, it is clear that the Superior Court will no longer award attorney's fees based on a percentage of the total award. It is necessary upon application for default judgment to demonstrate the reasonableness of the attorney's fees request, usually by affidavit. In drafting contracts in the District of Columbia with attorneys' fees provisions, it may be useful to change

the language to include the recovery of actual legal fees. But the court will continue to require that such fees also be reasonable.

The District of Columbia has a local version of the Federal Debt Collection Practices Act. The Act generally tracks the federal statute proscribing the same acts in collecting a debt as does the FDCPA. Abusive language, threats of jail, repeated telephone calls, and the like are proscribed. Civil suits are created that include a fee shifting provision.

The District of Columbia also has a wide-ranging and powerful Consumer Protection Act, which includes a fee-shifting provision. Creating a consumer debt through the use of high pressure or misleading sales tactics, for example, may well lead to a counterclaim based on violation of the Consumer Protection Act against the creditor in the collections action. This is true even if the creditor, in theory, financed the consumer transaction at arm's length.

There are no such restrictions on commercial collections, although the Court will enforce any violations of the rules of ethics in prosecuting commercial claims.

Judgments obtained in creditors' lawsuits become liens against any property held by the judgment debtor when recorded with the District of Columbia Recorder of Deeds. The liens are not automatic unless recorded. The fee for recording an abstract of judgment is currently \$31.50.

A secured creditor in the District may foreclose on the property.

Finally, there are no unusual Attorney General or ethics opinions operating in the District of Columbia.

Please be advised that this is not intended as legal advice. Changes to laws, statutes, regulations and costs can and do occur. We recommend that you contact an attorney for advice specific to your legal matters and your state.

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