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Litigation in Virginia: Civil and Criminal

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Litigation in Virginia: Civil and Criminal

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VIRGINIA LAWYERS PRACTICE HANDBOOK

LITIGATION IN VIRGINIA: CIVIL AND CRIMINAL

Second Edition

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CHAPTER 1

CIVIL PRACTICE IN THE GENERAL DISTRICT COURTS

1.1 JURISDICTION

1.101 Amount in Controversy. The general district courts are original jurisdiction courts with exclusive original jurisdiction over claims not exceeding \$4,500 and concurrent jurisdiction with the circuit courts for matters exceeding \$4,500 but not more than \$25,000, exclusive of interest and attorney fees,¹ except with regard to personal injury or wrongful death claims, in which case the jurisdictional limit is \$50,000, exclusive of interest and attorney fees.² Each general district court operates a small claims court with concurrent jurisdiction up to the jurisdictional limit of \$5,000.³ There is no jurisdictional amount-in-controversy requirement in actions for unlawful entry and detainer.⁴ District courts are entirely creatures of statute, and all jurisdiction, power, and authority over any civil action is conferred by the Virginia Code.⁵

1.102 Transfer and Amount of Claim. Under former section 16.1-92 of the Virginia Code, a defendant could remove a matter to the circuit court under certain circumstances. This option was abolished in 2007. Even before this change, a plaintiff who filed in the general district court had very limited options available to increase the amount of his or her claim above the jurisdictional limits. There previously existed no mechanism for a plaintiff to transfer or remove a matter to the circuit court. The taking of a nonsuit generally requires that the case be refiled in the same court.⁶ Even when filing a de novo appeal, the Virginia Code only permitted the plaintiff to increase the

¹ Va. Code § 16.1-77(1). Section 16.1-77 states that the jurisdictional amounts are “exclusive of interest and any attorney fees,” clarifying that the plaintiff’s damages may be claimed up to the full jurisdictional limit without jeopardizing the court’s ability to award these costs.

² Va. Code §§ 8.01-195.4, 16.1-77(1).

³ Va. Code §§ 16.1-122.1, -122.2. Parties must be pro se to remain in small claims court. An attorney or party may remove a small claim to the general district court under section 16.1-122.4.

⁴ Va. Code § 16.1-77(3).

⁵ Va. Code § 16.1-77(4).

⁶ See *infra* ¶ 1.508(C).

amount of the claim above the jurisdictional limits of the general district courts if the appeal was taken by the defendant.⁷

Significantly, the Virginia Code was amended in 2019 to empower plaintiffs to freely increase or decrease the amount of the claim “without requiring that the case first be dismissed or that the plaintiff suffer a nonsuit” and without affecting the tolling of the statutes of limitations.⁸ Except for good cause shown, the plaintiff must move to amend and transfer at least 10 days before trial.⁹ Cases can be moved from general district court to circuit court or vice versa.

To effectuate a transfer, the plaintiff must present an order of transfer to the transferring court for entry. The entry of this order removes the matter from the active docket of the court. The plaintiff then must present a certified copy of the order of transfer to the receiving court to complete the transfer. The plaintiff is required to pay all filing and other fees to initiate the matter in the receiving court.¹⁰

These procedural changes provide the plaintiff with exclusive control over the choice of forum.¹¹ A defendant still may not remove a matter to a different forum. The amended statutes are silent as to the period in which the plaintiff must reinitiate the case in the new forum. Because this statute extends the tolling of the statutes of limitations, a defendant should ensure that the order of transfer provides appropriate time parameters for reinitiating the case.

1.103 Subject Matter. Within the jurisdictional amounts, general district courts have jurisdiction to hear claims for:¹²

1. Specific personal property (detinue);¹³

⁷ Va. Code § 16.1-114.1.

⁸ Va. Code §§ 8.01-195.4, 16.1-77, 17.1-513. Of course, this presumes that amending the amount of the claim is otherwise proper under Rule 1:8 of the Rules of the Virginia Supreme Court.

⁹ Va. Code §§ 8.01-195.4, 16.1-77, 17.1-513.

¹⁰ Va. Code §§ 8.01-195.4, 16.1-77, 17.1-513.

¹¹ The exception is removal to federal court where available. *See* 28 U.S.C. § 1441 *et seq.* Transfer to the juvenile and domestic relations district courts may also be compulsory under certain circumstances. *See* Va. Code § 16.1-243.

¹² Va. Code § 16.1-77.

¹³ Va. Code § 16.1-77(1).

2. Any debt, fine, or other money;¹⁴
3. Damages for breach of contract;¹⁵
4. Damages to property, real or personal;¹⁶
5. Damages for personal injury, regardless of theory;¹⁷
6. Wrongful death;¹⁸
7. Attachment cases;¹⁹
8. Actions of unlawful entry or detainer;²⁰
9. Interpleader suits;²¹
10. Virginia Tort Claims Act actions;²²
11. Enforcement of Freedom of Information Act (FOIA) requests (concurrent with the circuit court) or of the Government Data Collection and Dissemination Practices Act for writs of mandamus or injunctions;²³

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* This section now increases the concurrent jurisdictional limit for a personal injury claim in the general district court from \$25,000 to \$50,000, exclusive of interest and attorney fees.

¹⁸ *Id.* This section adds wrongful death to the types of claims that the general district court can hear, and it also increases the concurrent jurisdictional limit for a wrongful death claim in that court from \$25,000 to \$50,000, exclusive of interest and attorney fees.

¹⁹ Va. Code § 16.1-77(2).

²⁰ Va. Code § 16.1-77(3); *see* Va. Code §§ 8.01-124 *et seq.* (unlawful entry), 55.1-1400 *et seq.* (detainer).

²¹ Va. Code § 16.1-77(5).

²² Va. Code § 8.01-195.1 *et seq.* Small claims courts have no jurisdiction over cases brought under the Virginia Tort Claims Act or suits against any officer or employee of the commonwealth for claims arising out of the performance of their official duties or responsibilities. Va. Code § 16.1-122.1.

²³ Va. Code §§ 16.1-77(6), -83, -106.

12. Cases brought under section 55.1-1959 of the Condominium Act²⁴ or section 55.1-1819 of the Property Owners' Association Act;²⁵
13. Enforcement of arbitration agreements per section 8.01-577 *et seq.* (concurrent with the circuit court);²⁶
14. Claims of any forthcoming bond taken by a sheriff or other officer upon a fieri facias;²⁷
15. Partition of personal property; and²⁸
15. Civil protective orders issued pursuant to sections 19.2-152.7:1 through 19.2-152.10.

For purposes of section 16.1-77, the territory served by a county general district court expressly authorized by statute to be established in a city includes the general district court courtroom.

1.104 Injunctive Relief. General district courts do not issue injunctions.²⁹

1.2 VENUE AND SERVICE OF PROCESS

1.201 Venue.³⁰ The aim of the venue provisions in the Virginia Code is to try actions in a forum “convenient to the parties and witnesses, where justice can be administered without prejudice and delay.”³¹ Actions may be brought in accordance with the general rules for venue provided in section

²⁴ Va. Code § 55.1-1900 *et seq.*

²⁵ Va. Code § 16.1-77(7); *see* Va. Code § 55.1-1800 *et seq.* (Property Owners' Association Act).

²⁶ Va. Code § 16.1-77(8).

²⁷ Va. Code § 16.1-77.1.

²⁸ Va. Code § 16.1-77.2.

²⁹ Va. Code § 16.1-77(5). An exception to this rule is that general district courts may issue writs of mandamus or injunctions pursuant to section 2.2-3713 of the Virginia Freedom of Information Act (Va. Code § 2.2-3700 *et seq.*) or section 2.2-3809 of the Government Data Collection and Dissemination Practices Act (Va. Code § 2.2-3800 *et seq.*). Va. Code § 16.1-77(6).

³⁰ Va. Code § 16.1-76.

³¹ Va. Code § 8.01-257.

8.01-257 *et seq.* of the Virginia Code. There are two general categories, with several exceptions, that determine proper venue.

A. Category A or “Preferred” Venue. Matters that fall under the Category A or “preferred” venue statute must be filed as specified in that statute.³² For general district court purposes, these include (i) unlawful detainer actions, which must be brought where the land is located,³³ (ii) attachments,³⁴ (iii) distress,³⁵ and (iv) Virginia Tort Claims Act cases, which must be brought in the location where the claimant resides or the act or omission occurred.³⁶ Out-of-state claimants must bring Virginia Tort Claims Act cases in the City of Richmond.³⁷

B. Category B or “Permissible” Venue. When the statute does not specify a Category A or preferred venue, the list of Category B or “permissible” venues under section 8.01-262 of the Virginia Code controls.³⁸ Permissible venues include, among others, the place where: (i) the defendant resides;³⁹ (ii) the defendant has a principal place of employment;⁴⁰ (iii) if the defendant is not an individual, it has its principal office or principal place of business;⁴¹ (iv) the defendant has a registered office or registered agent;⁴² (v) provided there exists any “practical nexus” to the forum, the defendant regularly conducts substantial business activity;⁴³ (vi) any part of the cause of action arose;⁴⁴ (vii) if there is no other forum available as listed under section 8.01-262(1) through (8), the defendant has property or debts owing to him or her subject to seizure by civil process;⁴⁵ or (vii) the plaintiff resides, provided

³² Va. Code § 8.01-261.

³³ Va. Code § 8.01-261(3)(g).

³⁴ Va. Code § 8.01-261(11).

³⁵ Va. Code § 8.01-261(20).

³⁶ Va. Code § 8.01-261(18).

³⁷ *Id.*

³⁸ Va. Code § 8.01-262.

³⁹ Va. Code § 8.01-262(1).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Va. Code § 8.01-262(2).

⁴³ Va. Code § 8.01-262(3).

⁴⁴ Va. Code § 8.01-262(4).

⁴⁵ Va. Code § 8.01-262(9).

there is no other permissible forum.⁴⁶ Section 8.01-262 also provides additional permissible venues for actions to recover or partition personal property, against fiduciaries, for improper message transmission or misdelivery, and arising out of the delivery of goods.⁴⁷

C. Objections to Improper Venue. Objections to improper venue are raised by a motion to transfer.⁴⁸ That motion must be received by the court on or before the day of trial.⁴⁹ The motion must specify why the current venue is improper and it must “give a better writ,” namely, it must state where proper venue would lie.⁵⁰ A motion to transfer may be filed by letter or other writing with the court, with a copy mailed to counsel of record.⁵¹ The party objecting to venue is not required to be present when the court rules upon the motion. In those cases, Rule 7B:11 states the procedures following the court’s ruling, including transferring venue or setting a new trial date, as the case may be. The court may award the prevailing party costs and attorney fees under section 8.01-266.

1.202 Service of Process. Service of process in general district court is accomplished in the manner provided by section 8.01-285 *et seq.* of the Virginia Code.⁵²

A. Service upon Persons.⁵³ Service of process upon natural persons may be accomplished by the following methods, in order of preference: (i) delivery of a copy of the pleading to the party in person by the sheriff or another process server; (ii) substituted service, either by (a) delivering a copy of the pleading to a family member at least 16 years of age at the party’s usual place of abode or (b) posting a copy of the process at the front door or main entrance of the defendant’s usual place of abode; or (iii) service by order of publication as provided under section 8.01-316 *et seq.*⁵⁴

⁴⁶ Va. Code § 8.01-262(10).

⁴⁷ Va. Code § 8.01-262(5)-(8).

⁴⁸ Va. Code § 8.01-264; Va. R. 7B:11.

⁴⁹ Va. Code § 8.01-264(A).

⁵⁰ *Id.*

⁵¹ Va. R. 7B:11.

⁵² Va. Code § 16.1-80.

⁵³ See *infra* ¶ 2.4 (for further discussion of service of process).

⁵⁴ Va. Code § 8.01-296. For a discussion of the procedures for effectuating service by publication, see paragraph 2.408 in Chapter 2 of this book.