

Anatomy of a Judgment Form: Summary Ejectment

In my [last post](#), I dissected the form Judgment for Actions to Recover Money or Personal Property, [AOC-CVM-400](#). This post will focus on [AOC-CVM-401](#), Judgment in Action for Summary Ejectment, the form used in evictions. During a recent session at the Fall Magistrates' Conference, there was a lively discussion about the practicalities around rendering judgments when the magistrate has a courtroom full of people waiting to be heard and a stack of judgments to enter electronically. The discussion centered on amendments to [G.S. 7A-224](#) and [G.S. 7A-228](#), which became effective October 1, 2025, affecting the rendition and entry of judgments in small claims. In response to that dialogue, it is a good time to talk about the rendition, entry, and service of magistrates' judgments. So, make sure you have [AOC-CVM-401](#) handy, and let's explore the contents of the form and the impacts of rendering and entering judgments.

Due Process: Notice of Claims and Date and Time of Hearing

Before the section for recording findings of fact, the form includes the following language: "This action was tried before the undersigned on the cause stated in the complaint. Except as may be indicated below, the record shows that the defendant(s) was given proper notice of the nature of the action and the date, time and location of trial." This statement encompasses especially important aspects of due process—notice and an opportunity to be heard. Its inclusion on the form also serves as a reminder to the magistrate that he or she is responsible for ensuring that those requirements of due process have been met.

Motions to dismiss for failing to state a claim for relief based on [Rule 12\(b\)\(6\) of the Rules of Civil Procedure](#) are not permitted in small claims. However, the magistrate presiding over an action for summary ejectment should still ensure that the complaint filed by the plaintiff provides sufficient notice to the defendant of the claims to allow the defendant to effectively respond. [G.S. 7A-216](#). If, in the magistrate's discretion, the complaint is insufficient to give notice to the defendant, the magistrate can require the plaintiff to amend the complaint and can order a continuance if necessary to give the defendant time to defend against the amended complaint.

Often the plaintiff will file [AOC-CVM-201](#), Complaint in Summary Ejectment, but the form is not required. Of note is a 2025 amendment to [G.S. 7A-232](#) that prohibits modification of forms promulgated by the Administrative Office of the Courts unless the party who modifies the form clearly notates that the form has been modified and specifies what has been changed. [S.L. 2025-54](#).

Service of the summons and complaint in actions for summary ejectment must be accomplished at least two days prior to the date set for hearing. [G.S. 42-29](#). If the

summons indicates that the minimum notice of two days has not been satisfied, the magistrate should continue (i.e., postpone) the case to satisfy the notice period, unless the defendant makes a knowing waiver of the minimum notice requirement.

The magistrate should explicitly inform the defendant of the amount of minimum notice to which the defendant is entitled and ask if the defendant wishes to continue the case or proceed. If the defendant waives minimum notice after this explanation, the magistrate should record such waiver in the “Findings” section under “Other.” If the defendant does not waive minimum notice, the magistrate should continue the case for a time period that will at least satisfy the minimum notice requirement. The magistrate should use form [AOC-G-108](#), Order, to order the continuance.

Findings

1. Presence of Defendant and Service of Process

Unlike actions to recover money or personal property, actions in summary ejectment may be served by the sheriff mailing a copy of the summons and complaint to the defendant and posting a copy of the summons and complaint in a conspicuous part of the premises which are the subject of the action. [G.S. 42-49](#). Service by posting gives the magistrate jurisdiction to enter a judgment for only possession of the property, unless the defendant makes an appearance in the case. A defendant appears in the case by filing an answer, filing a motion other than a motion objecting to personal jurisdiction, or appearing in court at the hearing. Such appearance submits the defendant to the jurisdiction of the court, and the magistrate can render a monetary judgment in addition to the judgment for possession of the real property.

2. Burden of Proof

Typically, the burden of proof in small claims cases is by the greater weight of the evidence, also referred to as the preponderance of the evidence, meaning more likely than not. It is important to remember that a defendant may, but is not required to, file an answer to the plaintiff’s complaint. The defendant’s failure to file an answer constitutes a general denial of all of the allegations in the complaint. [G.S. 7A-218](#). Therefore, the plaintiff must present evidence that establishes a *prima facie* case for each claim (i.e., enough evidence to support the validity of the claim). [G.S. 7A-222](#). If the plaintiff fails to establish a *prima facie* case, then the magistrate may enter a dismissal by checking the appropriate box on the form. *Id.*

There is an exception in actions for summary ejectment that allows a plaintiff to make a motion for judgment on the pleadings, meaning that the plaintiff is entitled to the relief sought based on the complaint without the need for a hearing. The exception for a motion

for judgment on the pleadings in summary ejectment applies when the complaint alleges the defendant's failure to pay rent as a breach of the lease for which reentry is allowed, the defendant has not appeared in court or filed a responsive pleading, and the plaintiff requests judgment for possession based on the allegations in the complaint. [G.S. 42-30](#). If the magistrate grants the motion, the magistrate should indicate it on the judgment form by checking box 2.c. under the findings.

3. Rent in Arrears

If the magistrate enters a judgment for possession in favor of the landlord, the tenant can stay execution of the judgment by paying to the clerk the amount of rent in arrears as determined by the magistrate and by signing an undertaking that the tenant will pay the tenant's share of the contract rent as it becomes due. G.S. 42-34. For this reason, it is important that the magistrate complete Finding #3. If there is no dispute about how much rent the defendant owes, then the magistrate will record that amount in box 3.a. If the defendant disputes the amount of rent that is owed, the magistrate will record only the undisputed amount of rent in box 3.b.

4. Other Findings of Fact

Examples of other findings of fact include other damages that the landlord may be entitled to such as late fees, administrative fees, out-of-pocket expenses, and attorney's fees. A landlord-tenant relationship is a required element of any action for summary ejectment. If the parties do not have such a relationship and the magistrate dismisses the action for this reason, then that finding could be recorded in the "Other" section. The magistrate could also note if the defendant raised a defense since failure to raise a defense in the small claims action could be part of the basis for dismissal on appeal. [G.S. 7A-228\(d\)](#).

Corrections to misnomers in party names and amendments to the complaint made in open court could also be recorded here. Substitution of the real party in interest may also be indicated here in the case where the property manager or agent filed the complaint in their own name rather than in the name of the property owner. The property owner, not the agent, is entitled to the relief sought in the complaint and should be listed as the plaintiff. [G.S. 1A-1, Rule 17\(a\)](#).

Order

1. Recover Possession of Premises

If the plaintiff persuades the magistrate by a preponderance of the evidence or successfully moves for judgment on the pleadings, then the magistrate will check box #1 in

the Order requiring the defendant's removal from the property and granting possession back to the plaintiff.

2. Dismissal with Prejudice

If the plaintiff fails to persuade the magistrate by a preponderance of the evidence that the plaintiff is entitled to the relief sought, then the magistrate will dismiss the action by checking the second box in the Order section of the form judgment. [G.S. 7A-222](#). This dismissal is usually with prejudice, meaning that the plaintiff cannot refile the same claim against the defendant. If the plaintiff disagrees with the magistrate's decision, the plaintiff has the right to appeal the case for a new trial in district court. [G.S. 7A-228](#).

3. Dismissal Due to Tender of Rent and Costs

If the plaintiff's claim for summary ejectment is based on the statutory forfeiture for nonpayment of rent implied in leases pursuant to [G.S. 42-3](#), the defendant can defend against the claim by paying the landlord all the rent owed plus the court costs at any point before the court enters judgment. [G.S. 42-33](#). This defense is referred to as "tender" and is only available for claims brought under G.S. 42-3. It is not available in cases when the tenant breaches a condition of the lease for which the landlord can retake possession of the property, holds over after the expiration of the term of the lease, or commits criminal activity at the property.

4. Recovery of Rent

The plaintiff is entitled to recover rent owed through the date of judgment and any other damages that are proven, such as late and other fees. The magistrate should complete the corresponding boxes for the rate of rent owed by the defendant, the amount of rent in arrears through the date of court, and amount of other damages.

5. Severing Claims for Possession and Money Damages

Often, the plaintiff brings a claim for possession of the real property with a claim for money owed for rent, late and other fees, or damage to the property. When the summons and complaint are served by posting, and the defendant does not make an appearance in the case, the judgment will only be for possession of the property, leaving the money claim unresolved. [G.S. 7A-223](#) was amended in 2017 to allow the plaintiff to request the money claim be severed from the claim for possession. The claim for monetary damages will remain pending, and the plaintiff can continue to attempt personal service of the summons and complaint on the defendant. Once personal service is accomplished, the plaintiff can have the claim calendared for a hearing in small claims.

6. Other Orders

If there are multiple defendants, all of whom have been served by posting, but some of the defendants make an appearance in the case, the magistrate may enter a monetary judgment against only those defendants who appear. The “other” section of the order can be used to explain which defendants the monetary judgment is entered against.

In some summary ejectment cases, the defendant may raise the issue of rent abatement because of the unfit or uninhabitable conditions of the property. If the magistrate decides to abate (i.e., reduce) the rent owed by the defendant, the magistrate can use this section to order the abatement. Rent abatement is explained in this [blog post](#).

These are only two examples of how to use the “other” section. This list is not exhaustive.

7. Costs of the Action

Lastly, the form judgment requires the magistrate to determine whether the plaintiff will recover court costs. These costs include the filing fee paid to the court for initiating the action and the costs for service of process whether service is by certified mail, publication, or personal service by the sheriff, or in some cases, by a process server. [G.S. 7A-305](#). If the plaintiff is the prevailing party, then the plaintiff is presumptively entitled to the court costs. [G.S. 6-1](#). In that instance, the magistrate will check the box in the “Order” section that taxes the costs to the defendant. If the plaintiff’s case is dismissed, then the plaintiff is responsible for the costs, and the magistrate can check that box.

Rendition and Service of the Magistrate’s Judgment

1. Announced, Signed and Served in Open Court

Rendering Judgment

The magistrate’s judgment is rendered when it is reduced to writing and signed by the magistrate or when it is rendered electronically by the magistrate. [G.S. 7A-224](#). And the time clock for the parties to file a written notice of appeal begins to run when the magistrate’s judgment is rendered. [G.S. 7A-228](#). Entry of the judgment, discussed below, takes place as soon as practicable thereafter. *Id.* The time to appeal, pay the costs of the appeal, and petition to appear as indigent used to start at the entry of judgment, but a recent change to G.S. 7A-228 moved the starting point to when the magistrate renders judgment.

Entry of Judgment

A judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court pursuant to Rule 5 of the North Carolina Rules of Civil Procedure. [G.S. 1A-1, Rule 58](#). Although small claims judgments are entered in accordance with Rule 58 like all other judgments, service of small claims judgments is treated differently.

Service of Judgment

When the judgment in small claims is announced and signed in open court at the conclusion of the hearing, the judgment is considered served on the parties, even if the defendant is not present. *Id.* When the judgment is not announced and signed in open court, the judgment must be served by the magistrate on all the parties (and attorneys of record if applicable) within three days after the judgment is entered. *Id.*

All time periods, like the time to appeal, are tolled for the duration of any period of noncompliance with the service requirement in Rule 58. *Id.* So, if the magistrate does not announce and sign the judgment, whether in writing or electronically, in open court at the end of the case, the time to appeal is extended until three days after the magistrate mails a copy of the judgment to the parties and attorneys of record or a maximum of ninety days after judgment is entered. *Id.*

At the recent fall conference, there was discussion about magistrates announcing their judgments, and recording them in the minutes, but not reducing the judgments to writing and signing them in open court due to concerns about efficiency. Then, at the end of the day and sometimes late into the evening, the magistrates complete and sign the judgment forms based upon the minutes. The judgments, although announced in open court, are not effectively rendered and served.

This practice is problematic for a few reasons. First, if the judgment is not reduced to writing or entered into Odyssey and signed, then the judgment has not been effectively rendered and served on the parties, even though it was announced. Because of this delay, it is as though the magistrate reserved judgment on the matter and now must serve the judgment on the parties. Second, the clerk of court will know it was not served in open court if the judgment is signed after hours and will not be able to issue a writ to enforce it if there is no proof of service. Lastly, there is a chance that the minutes will not accurately reflect what was announced, which will impact the precision of the written judgment. The best practice is to type and sign your judgment at the conclusion of the evidence and announce it from the written and signed judgment form.

2. Reserved Judgment and Certification

When the magistrate intentionally decides to reserve judgment and does not reduce the judgment to writing and sign it in open court, the magistrate is responsible for serving the judgment on the parties and the attorneys of record. In those cases, the magistrate will complete the “Certification” box on the bottom of the form judgment indicating service of the judgment on the parties by mail.

A Note of Gratitude

Thank you to all the magistrates who attended the fall conference. Your participation and questions teach me as much as I teach you. A special thanks to the Guilford County Greensboro small claims magistrates for allowing me to visit and get a true sense of how the law is put into practice. Spending the day in court was a great window into the challenges magistrates face while serving the citizens of North Carolina.