

## SCHEDULE FOR TODAY

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- 9:00 Welcome & Introductions
- 9:15 Small Claims Overview
- 10:45 Break
- 11:00 Learning to Analyze Small Claims Cases
- 12:15 Lunch at SOG
- 1:00 Small Claims Procedure
- 2:30 Break
- 2:45 Procedure, cont'd
- 4:45 Recess

## OBJECTIVES FOR DAY 1

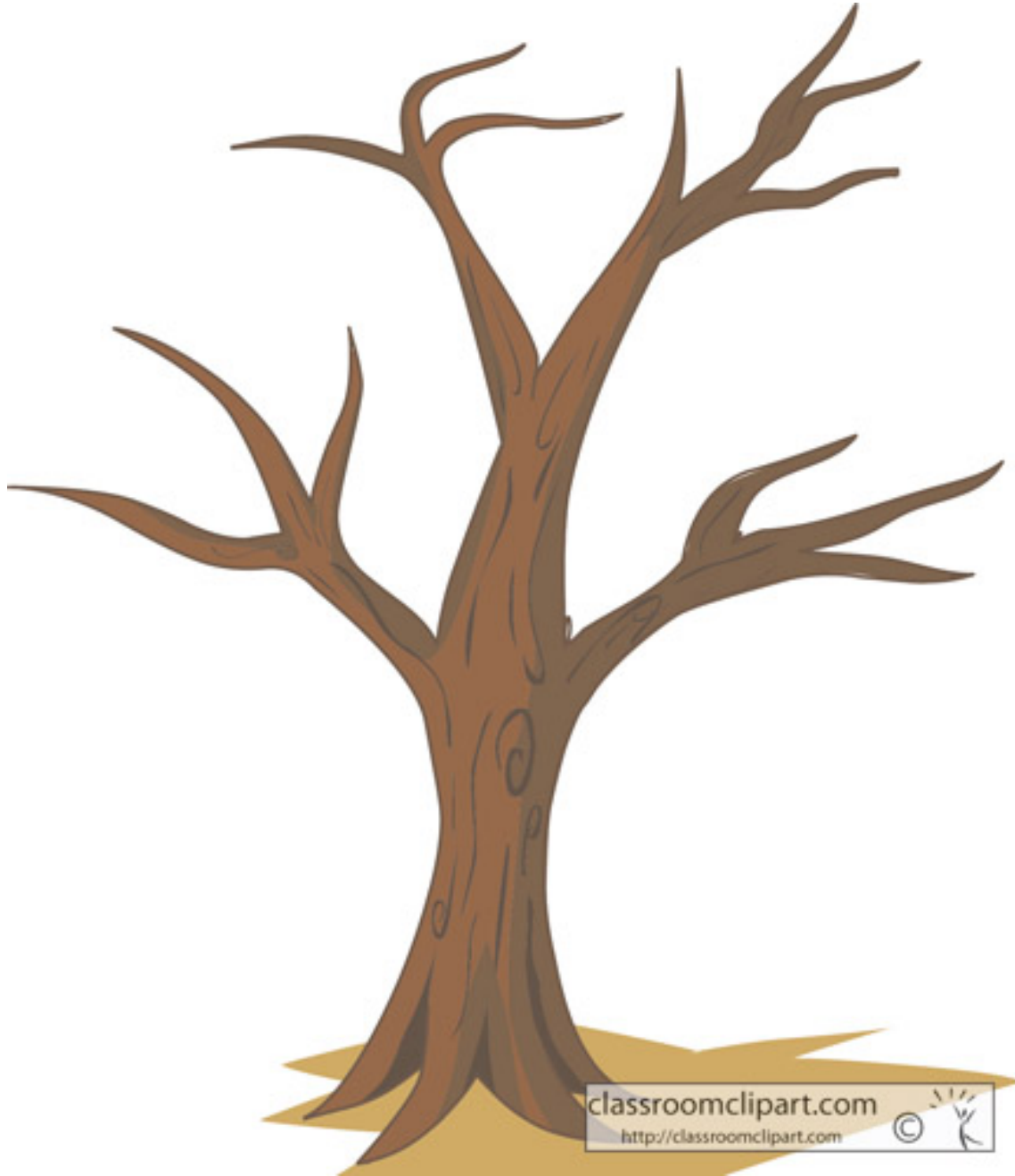
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We'll jump right in today with a look at what factors make a good judge good. We'll learn a basic analytical approach to deciding cases, and briefly review substantive law related to motor vehicle liens and some specific kinds of money owed cases. We'll become familiar with the basic rules of small claims procedure and practice applying the rules in some frequently-occurring fact situations.

NOTES:


ACTIVITY: WHAT MAKES A GOOD JUDGE GOOD?

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ANALYTICAL FRAMEWORK

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## Lecture: Judicial Decision-Making

NOTES:



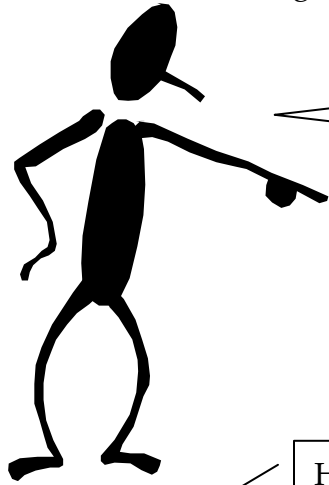
A **cause of action** is \_\_\_\_\_  
\_\_\_\_\_.

Before we allow a plaintiff to use the force of law to take away property belonging to another, we require every plaintiff to establish specific facts. We call these facts

### Essential Elements

Every cause of action has its own particular elements. Only after a plaintiff has introduced sufficient evidence to **prove** each individual element do we require

a defendant to either rebut the evidence against her, or introduce additional evidence establishing an affirmative defense.

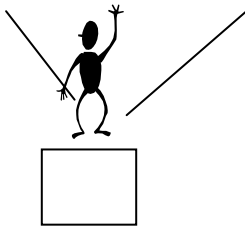


You injured me by \_\_\_\_\_  
\_\_\_\_\_  
and so I'm suing you for \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_!!!!



Here are the essential elements of my case:  
1. \_\_\_\_\_  
2. \_\_\_\_\_  
3. \_\_\_\_\_  
4. \_\_\_\_\_

I am not responsible for your injury, because one of your essential elements is not true:  
\_\_\_\_\_  
\_\_\_\_\_



Even if everything you say is true, I'm STILL not responsible for your injury, because  
\_\_\_\_\_  
\_\_\_\_\_

NOTES:


Exercise: Identifying the Elements in a Motor Vehicle Lien Case

An auto repair shop has filed an action to enforce a motor vehicle lien, using AOC CVM-203. Use Small Claims Law to identify the essential elements of plaintiff's case.

1. \_\_\_\_\_  
\_\_\_\_\_.
2. \_\_\_\_\_  
\_\_\_\_\_.
3. \_\_\_\_\_  
\_\_\_\_\_.
4. \_\_\_\_\_  
\_\_\_\_\_.
5. \_\_\_\_\_  
\_\_\_\_\_.
6. \_\_\_\_\_  
\_\_\_\_\_.

See also the Appendix for two handouts: *Motor Vehicle Liens: A Quick Reference Guide*, and *Details, Details, Details: Companion to the Quick Reference Guide*.

### Exercise: Identifying the Elements in an Action to Recover a Security Deposit

1. \_\_\_\_\_  
\_\_\_\_\_.
2. \_\_\_\_\_  
\_\_\_\_\_.
3. \_\_\_\_\_  
\_\_\_\_\_.

Was it easier or harder to complete the second exercise?

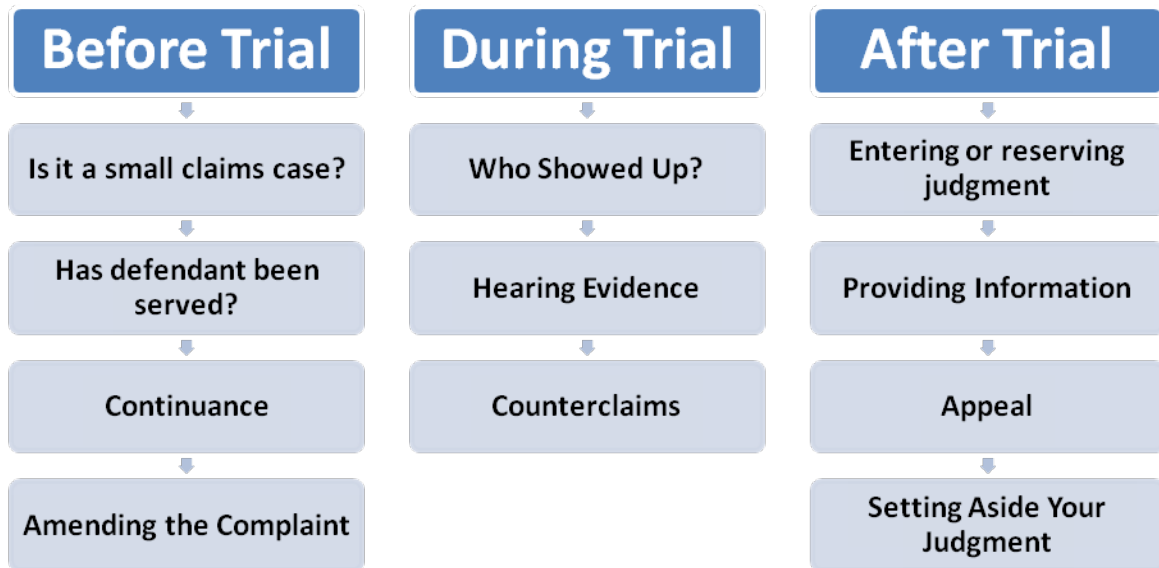
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## SMALL CLAIMS PROCEDURE

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### IS IT A SMALL CLAIMS CASE?

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The law authorizes **you** to decide

**SMALL CLAIM CASES**

Amount in controversy	Certain kinds of cases only
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**ASSIGNED BY YOUR DCJ**

The law authorizes your chief district court judge to assign a case to small claims court if it otherwise meets the definition of a small claims case and if at least one defendant lives in the county.

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AMOUNT IN CONTROVERSY RULES

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1. If the plaintiff is asking for money, the amount must be \$\_\_\_\_\_ or less.
2. The amount in controversy is determined as of the time \_\_\_\_\_.
3. The plaintiff must ask for \_\_\_\_\_ of the amount he's entitled to for this particular claim. In other words, \_\_\_\_\_.
4. If the plaintiff is asking for return of personal property, the amount in controversy is \_\_\_\_\_.
5. In summary ejectment actions in which the landlord is seeking only possession, the amount in controversy requirement \_\_\_\_\_.

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CERTAIN KINDS OF CASES ONLY

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1. Actions for \_\_\_\_\_.
2. Actions to \_\_\_\_\_  
either as a \_\_\_\_\_ or as the  
\_\_\_\_\_.
3. Action in \_\_\_\_\_  
defined as an action by a \_\_\_\_\_ against a  
\_\_\_\_\_ to recover \_\_\_\_\_  
\_\_\_\_\_.

4. Action to enforce a \_\_\_\_\_.

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HAS DEFENDANT BEEN SERVED?

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-Service (or a legal substitute) is required before a judge has authority to decide a case.

-If the summons indicates the defendant was served, the presumption is that service was accomplished.

-If defendant files an answer before trial challenging personal jurisdiction, a district court judge must rule on that motion before the magistrate may proceed with the case.

**-Service is not required if defendant makes a voluntary appearance, either by filing an answer or motion in the case, or if the defendant appears at trial.**

-Special rule for service in summary ejectment actions: service by posting is sufficient to accomplish service of process allowing entry of judgment awarding possession only. Service by posting is NOT sufficient for award of money damages.

Problem: When you call a case for trial, you notice that defendant has not been served. Plaintiff is present in court, but defendant is not present. What should you do?

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Same facts, but defendant is present. What should you do?

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CONTINUANCES

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When a judge grants a continuance, s/he is agreeing that the trial will be delayed. There are three factors to consider: (1) whether the parties agree; (2) the reason for the continuance; (3) the overall fairness of the trial.

If the parties agree to a continuance, the court almost always grants it.  
Exception: \_\_\_\_\_.

*General Rule: a continuance may be granted on request of a party or upon the judge's own motion. Except for the rare case in which a continuance is mandatory, it should be granted only for good cause shown. Whether good cause exists lies within the sound discretion of the judge.*

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When is a continuance mandatory? Under GS 7A-214, in actions other than for summary ejectment, "if the time set for trial is earlier than five days after service of the magistrate summons, the magistrate shall order a continuance." For discussion of how this rule should be applied, see *Service of Civil Process: 2009 Legislation* in the Appendix. **Note that this law was enacted subsequent to the publication of Small Claims Law, and is thus not included in that resource.**

Your County's Continuance Policy:


## AMENDING THE COMPLAINT

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Plaintiffs are allowed to change – “amend” – their complaints even after trial begins, so long as the defendant has adequate notice and time to prepare a response. A small change—such as correcting the spelling of a name—requires little notice, while a significant change, such as asking for money instead of personal property, may require a continuance. Amendments are NOT allowed if they change the party being sued. In that case, the plaintiff must file another lawsuit and serve the proper defendant. An amendment can literally be handwritten on the complaint, and should be noted in the judgment.


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## WHO SHOWED UP

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General Rule #1: A party may represent herself in small claims court, or she may be represented by an attorney.

General Rule #2: The plaintiff in a lawsuit must be the *real party in interest*—the person who has actually suffered injury.

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### EXERCISE: SHOULD YOU MAKE AN EXCEPTION?

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1. Patsy Plaintiff is elderly and intimidated by the very thought of coming to court, so she brings her grandson Gary with her to present her evidence. Can Gary present the case, so long as Patsy is there to testify?

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2. Patsy Plaintiff is still intimidated, so she brings her grandson with her, but this time she's prepared to prove that Gary has a power of attorney. Does a power of attorney authorize Gary to present her case in small claims court?

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3. Larry Landlord lives in Louisiana, and he pays Michael Manger to act as his rental agent. Michael files a summary ejectment action against Tommy Tenant (Michael v. Tenant). Can Michael present the case? Can you enter judgment in favor of Michael?

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## HEARING EVIDENCE

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 *No default judgment in small claims court.*

*Plaintiff must introduce enough evidence to demonstrate that each essential element of the case is probably true.*

- ❖ Plaintiff always testifies first.
  
- ❖ Defendant has a right to ask questions, but often will choose simply to tell his or her story instead.
  
- ❖ Defendant does not have to introduce evidence (and actually may not even be present) unless plaintiff has produced enough evidence to win, assuming you believe that evidence to be true. This is called establishing a *prima facie* (“on first appearance”) case.
  
- ❖ If plaintiff establishes a *prima facie* case, defendant has an opportunity to produce evidence either contradicting an element of plaintiff’s case or establishing some affirmative reason plaintiff should not win.
  
- ❖ Defendant has the burden of proof on affirmative defenses.
  
- ❖ Magistrate decides degree of formality in courtroom.

NOTES:


## POINTS TO REMEMBER IN MAKING DECISIONS ABOUT EVIDENCE

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- Distinguish between the decision to admit evidence and the decision about the weight you give to evidence.
- Small claims court is not subject to review on appeal in the same way other trial courts are, so whether evidence does or does not become “part of the record” does not have the same meaning. This is because in small claims court there actually IS no record. i
- Small claims cases never involve juries, and so the legal principles governing consideration of evidence that apply to trials before the judge without a jury are more relevant than are the rules used in jury trials.

NOTES:


- Unless evidence is objected to, or unless you, the judge, feel that the evidence is such that it might improperly bias your decision, it should be freely admitted – and given appropriate weight. Remember that the rules of evidence are complicated, and many of the general rules— particularly the hearsay rule—are subject to numerous exceptions. If an evidentiary ruling is critical to the outcome of a case, be certain you’re correctly applying the rule.
- When evidence is objected to, it is often appropriate to rule on the objection by admitting the evidence but pointing out that its weight is to be determined.

- When an attorney repeatedly objects—or when you anticipate that this may happen – it is proper to instruct the attorney to hold objections until the close of the evidence, at which point the attorney may be allowed to present arguments about its weight and admissibility.

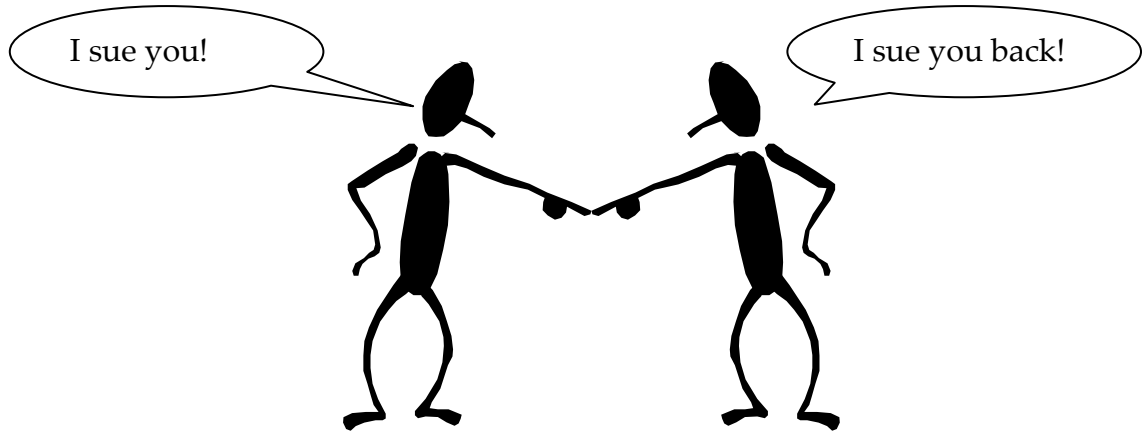
**See** *The Four Commandments for Dealing with Attorneys* in the Appendix for one example of a statement to this effect.

- In general, evidence is admissible and entitled to consideration if it is *relevant* to an issue in the case and *reliable* (that is, likely to be true).

Notes:


## COUNTERCLAIM

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Rules for  
Counterclaims

1. Must be filed in clerk's office before time the case is set for trial. Law requires defendant to pay court costs just as though he'd filed a small claims case.
2. Plaintiff is entitled to continuance if necessary to prepare a defense.
3. May not exceed \$5000.
4. Treated just as though you're hearing two cases back-to-back.
5. Requires modification of judgment form.

NOTES:


## ENTERING JUDGMENT

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When a judge announces her decision at the close of the evidence, she is said to be *entering judgment*. There are no particular words that must be used, but all good judgments have some common qualities:

--The magistrate makes it clear that the time for presenting evidence is over, and that she is now ready to announce her decision. For example, "Mrs. Smith, do you wish to say anything further? Mr. Jones, how about you? I find that both parties have completed introducing evidence in this case, and I am ready to make my decision. Having heard and considered all of the evidence, I am going to rule as follows: . . ."

--The magistrate clearly identifies who wins. For example, "I am going to rule in favor of the plaintiff, Mrs. Smith, in this matter." (By using the party's name, the magistrate avoids confusion about which party is "the plaintiff.")

--The magistrate briefly summarizes the facts and states the reason for her decision. For example: "Mrs. Smith, I find that you had a lease agreement with Mr. Jones which required him to pay \$400 rent on the first of each month. I find that he has not paid the rent for May and June, and that under the terms of the lease his failure to pay gives you, the landlord, the right to obtain possession of the rental property."

--The magistrate clearly states the result. "Mr. Jones, I am entering a judgment which gives possession of the apartment to Mrs. Smith, and which requires you to move out of the apartment immediately. You have the right to appeal this judgment to district court and, if you want to appeal, you must give notice of that to me or the clerk within 10 days. Mrs. Smith, after ten days have passed, if Mr. Jones is not out of the apartment, you may ask the clerk to begin the procedure to enforce this judgment."

--The magistrate gives both parties a chance to ask questions.




See the Appendix for a handout some magistrates use at this point: *What Happens After Small Claims Court*.

Sometimes a magistrate does not want to enter judgment immediately. The law allows a magistrate to delay entering judgment for up to 10 days (“*reserving judgment*”). What are some reasons a magistrate might decide to reserve judgment?

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

The AOC-CVM Judgment forms have instructions at the bottom for reserving judgment.

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## APPEAL

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G.S. 228 provides that “After final disposition before the magistrate, the sole remedy for an aggrieved party is appeal for trial de novo before a district court judge or a jury.”

“De novo” means “new”: an appeal from small claims court means that the parties will have a new trial before a district court judge.

Here are some important things to know about appeal:

An “aggrieved party” has 10 days from entry of judgment to give notice of appeal.

“Entry of judgment” occurs when the judgment is filed with the clerk.

Rule 6 (see the Appendix) controls how days are counted.

Notice of appeal may be given in either of two ways: in open court or by filing written notice in the clerk’s office.

Unless a party qualifies as an indigent, he must pay costs of appeal within 20 days or else have the appeal dismissed.

The law does not permit enforcement of a judgment during the notice of appeal period. If a defendant gives notice of appeal from a money judgment, enforcement of that judgment is automatically stayed while the appeal is pending. Notice of appeal from a judgment awarding possession of personal or rental property does not automatically stay a judgment, but there is a procedure by which the defendant in such a case may arrange a stay, available through the clerk's office.

## SETTING ASIDE YOUR JUDGMENT UNDER RULE 60

Magistrates in some districts have been authorized by their chief district court judges to “set aside” —or erase—a judgment, so that it is not longer valid. This ability to set aside a judgment is powerful and must be used carefully and according to certain specific rules.

A motion to set aside a judgment (sometimes referred to as a *Rule 60 motion*) may be brought before an authorized magistrate only for mistake or excusable neglect by the party seeking relief. (There are other grounds besides mistake and excusable neglect, but those motions must be heard by a district court judge.) If one party makes a Rule 60 motion, all parties must be given notice of the motion and an opportunity to attend the hearing on the motion.

In deciding whether to grant a motion to set aside a judgment, the magistrate must consider many factors, including the importance of judgments being final so that people can rely on them. A party seeking to interfere with that finality must be able to show that there was a really good reason for their neglect or mistake. If the moving party is the defendant, an additional showing is required: that granting the motion will not be a waste of time, in that if they are given another chance, there is a reasonable possibility that the eventual decision would be to their benefit (sometimes called “*a meritorious defense*”).

Example: Plaintiff files an action for money owed, but the defendant does not appear on the day of trial. Fifteen days later, when the plaintiff takes the first steps toward enforcing his judgment, the defendant files a Rule 60 motion asking that you set aside the judgment. At the hearing, the defendant shows

that service of process was accomplished by leaving a copy of the complaint and summons with his wife, who died suddenly later that day. Defendant asserts that he never received actual notice of the legal action against him, and you find this believable. When you inquire about plaintiff's allegations, defendant admits that he owes the money, but asks for additional time to pay in light of his present stressed financial situation. Has defendant demonstrated excusable neglect? Probably. Nevertheless, his motion to set aside the judgment should be denied because he has failed to demonstrate any possibility that he would prevail in a new trial—he has no defense against the claim.

**A note about clerical errors:** A magistrate has authority to correct a clerical error in the judgment even if neither party requests it. A clerical error occurs when the written judgment contains a mistake that causes it NOT to reflect the actual decision of the magistrate—essentially, a mistake in writing. Examples include transposing numbers, misspelling the name of a party, or writing down the wrong date. It is extremely important that the magistrate not confuse an error of law or judgment with a clerical error—the former is far more serious and receives much different treatment.

NOTES: