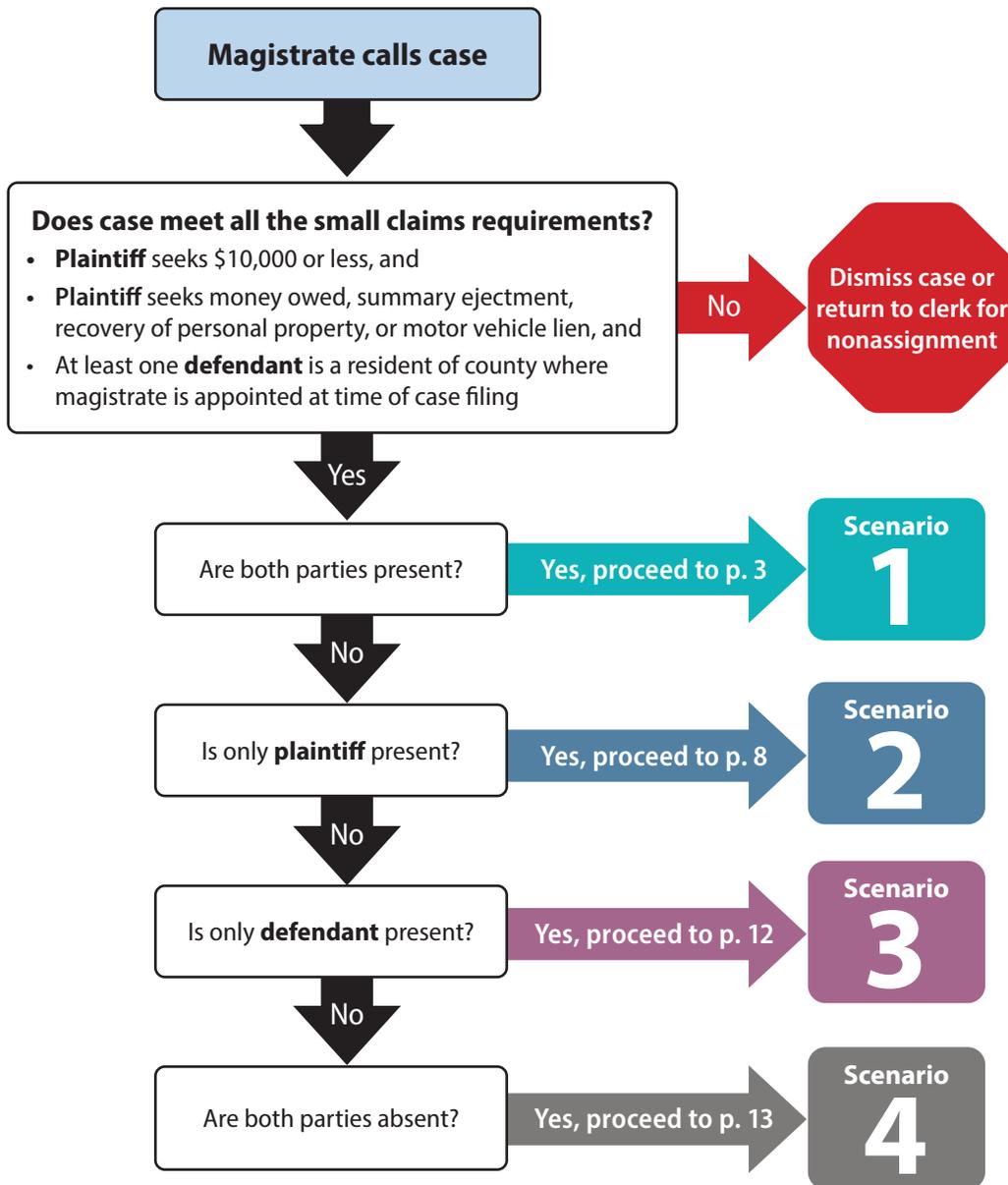


Magistrates' Procedure in Small Claims Cases

Melanie Crenshaw

These flowcharts serve as a quick reference guide for magistrates handling small claims cases. Explanatory notes detailing each step of the process are provided along with each chart.



Magistrate calls case

When a small claims case is called in court, several different scenarios may occur. Both parties may be present, only the plaintiff or only the defendant may be present, or neither party may be present. These flowcharts are designed for magistrates to use in each scenario to determine whether all of the mandatory rules of small claims procedure have been satisfied. Based on who is present in court, the magistrate will select the corresponding flowchart and follow it from calling the case to entering judgment.

In any scenario, if the magistrate has evidence that the defendant has filed for bankruptcy, state court proceedings are automatically stayed. The small claims case should be discontinued using form AOC-G-108 until the bankruptcy case is resolved or the plaintiff provides proof to the court that the stay has been lifted by the bankruptcy court.

Does the case meet all the small claims requirements?

A small claims action is a civil action wherein: (1) the amount in controversy does not exceed \$10,000, and (2) the principal relief sought is monetary, the recovery of specific personal property, summary ejectment, or any combination of these. G.S. 7A-210. Magistrates may also be assigned cases to enforce motor vehicle or storage liens arising under G.S. 44A-2(d) or 20-77(d). G.S. 7A-211.1. Chief district court judges can assign any of the small claims actions listed above to magistrates if there is at least one defendant who is a bona fide resident of the county where the magistrate is appointed to preside at the time of filing. G.S. 7A-211.

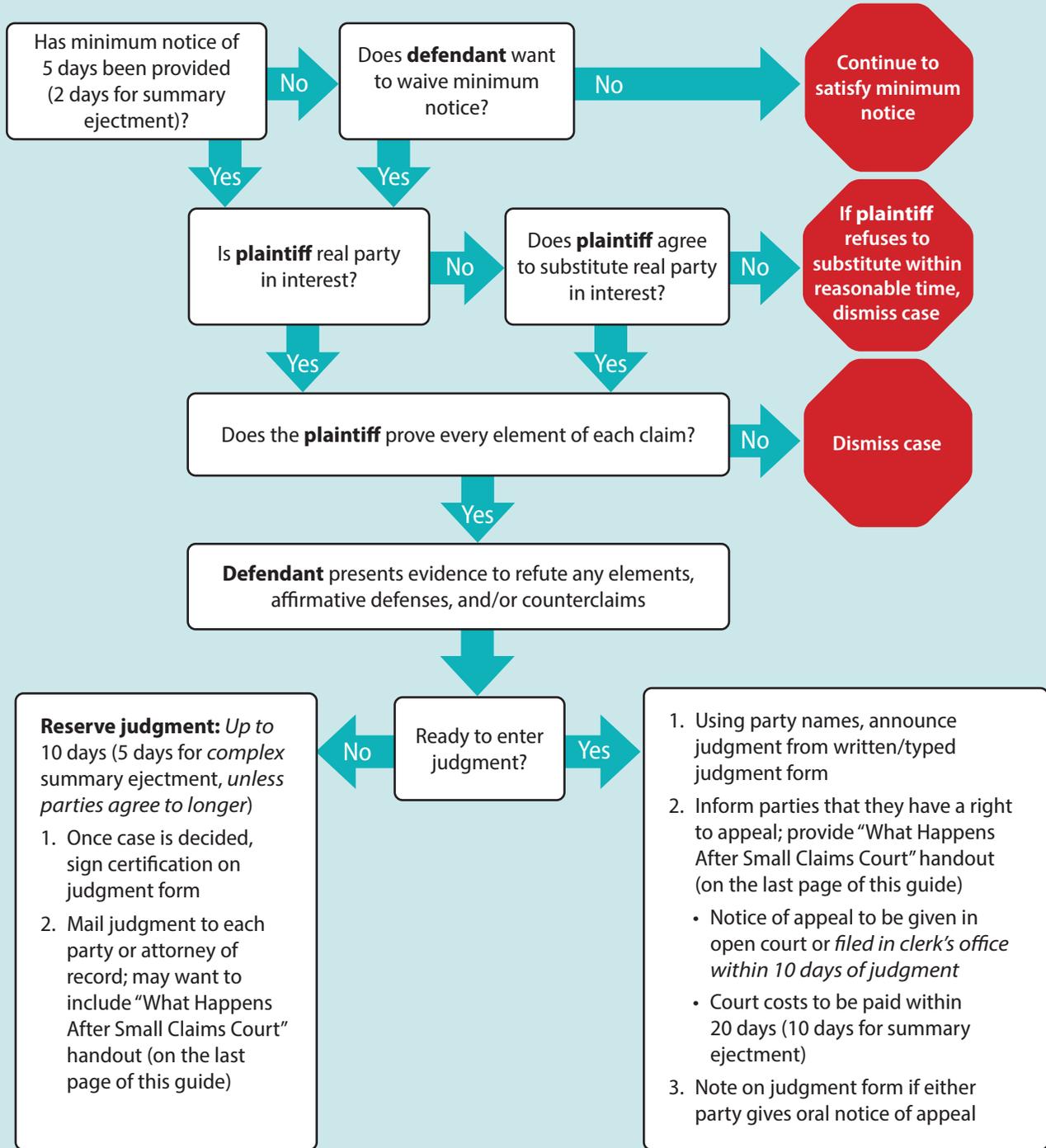
These requirements are jurisdictional, meaning that for the magistrate to have subject matter jurisdiction over the proceeding, all of the requirements must be met. If the magistrate does not have subject matter jurisdiction to hear the case, the case may be dismissed. However, the magistrate also has the option of returning the case to the clerk's office for the clerk to follow the procedure for nonassignment in a small claims action. G.S. 7A-215. If a magistrate enters judgment in a matter that was not assigned by the chief district court judge, the judgment is void. G.S. 7A-212.

If the jurisdictional defect is that the amount in controversy exceeds \$10,000, the plaintiff may move to amend the complaint to reduce the damages to comply with G.S. 7A-210. Rule 15 of the North Carolina Rules of Civil Procedure (NCRCP) allows a party to amend a pleading with leave of the court and provides that leave shall be freely given when justice so requires. G.S. 1A-1, Rule 15. Motions to amend may also be granted when the pleading does not provide the court and the other party with sufficient notice of the claim. If a motion to amend a pleading is granted, the magistrate will need to consider whether the other party needs a continuance in order to prepare a defense against the amended pleading. Motions to dismiss for failure to state a claim under Rule 12(b)(6) of the NCRCP are not allowed in small claims, but the magistrate may order the plaintiff to perfect the statement of the claim and shall grant continuances pending any such perfection. G.S. 7A-216.

The magistrate should be able to determine from the face of the plaintiff's complaint whether the case is one that can be assigned to a magistrate. Before proceeding, the magistrate should also review the filings for any motions objecting to venue or personal jurisdiction over the defendant. These objections are waived if they are not filed prior to the time set for trial. If they are filed before the hearing, assignment to small claims is temporarily suspended, and the motions are heard by the chief district court judge or a designated judge. G.S. 7A-221. Upon determining that assignment is proper and no objections to venue or personal jurisdiction have been filed, the magistrate may proceed. The proceedings will vary depending on which parties are present in court and whether the rules of small claim procedure have been followed.

Scenario
1

**Plaintiff is present
Defendant is present**



Scenario 1: Plaintiff is present; defendant is present

Has the minimum notice of five days been provided (two days for summary ejectment)?

At a minimum, due process requires that parties receive notice of actions filed against them and have an opportunity to be heard on the claims before an impartial court. In small claims actions, the amount of notice required to satisfy the minimum due process requirement is set out by statute. For claims other than summary ejectment, the defendant must be served with the summons and complaint at least five (5) days prior to the trial date. G.S. 7A-214.

G.S. Ch. 7A, Art. 19, Small Claim Actions in District Court, governs the procedures to be followed in small claims court. Where those procedures are silent, the North Carolina Rules of Civil Procedure (NCRCP) are applied, unless a different procedure is prescribed by statute. G.S. 1A-1, Rule 1. To calculate the five-day notice period for service of the summons and complaint (other than for summary ejectment), Rule 6(a) applies. When the time period is less than seven (7) days, weekends and legal holidays are excluded. The first day of the relevant event is not counted. The final day is counted, unless it falls on a weekend or legal holiday when the courthouse is closed. In that case, the final day is the next business day.

EXAMPLE 1

Imagine that the summons and complaint for money owed are served on the defendant on Tuesday, April 1. Applying Rule 6(a), the five-day notice period is calculated as follows:

Tuesday, April 1	Day 0 (the day of service is not counted)
Wednesday, April 2	Day 1
Thursday, April 3	Day 2
Friday, April 4	Day 3
Saturday/Sunday, April 5/6	(intermediate weekend days are excluded)
Monday, April 7	Day 4
Tuesday, April 8	Day 5 (earliest allowable trial date)

For summary ejectment claims, G.S. 42-29 requires that service of process occurs at least two (2) days prior to trial, excluding legal holidays. The statute sets out a procedure that differs from the NCRCP as it excludes only legal holidays—not weekend days. Therefore, Rule 6(a) does not apply to this time period.

EXAMPLE 2

Now imagine that the complaint is for summary ejectment, and the summons and complaint are served on the defendant on Friday, August 29. Applying G.S. 42-29, the two-day notice period is calculated as follows:

Friday, August 29	Day 0 (the day of service is not counted)
Saturday, August 30	Day 1
Sunday, August 31	Day 2 (would be trial date if not weekend)
Monday, September 1	Labor Day (legal holidays are excluded)
Tuesday, September 2	Day 3 (earliest allowable trial date)

Does the defendant want to waive minimum notice?

When both parties are present, but minimum notice has not been satisfied, the magistrate has two options: (1) The magistrate may either continue the case to allow for the required notice period, or (2) ask the defendant whether he/she wants to waive minimum notice. The waiver must be knowing, which means that the magistrate must inform the defendant of the minimum notice period the defendant is entitled to have before the hearing (two days for summary ejectment cases and five days for all other small claims cases). If the defendant chooses to proceed and waive any remaining notice time, the magistrate should note the waiver in the findings section of the judgment form. If the defendant declines to waive minimum notice, the magistrate should continue the case for a period that satisfies the notice requirement. This is done by completing the continuance block on AOC-G-108, "Order." In some cases, including summary ejectment cases where only two days' notice is required, this continuance may be as short as the next day.

Is the plaintiff the real party in interest?

The plaintiff named in the complaint must be the real party in interest, that is, the party legally entitled to the relief sought. G.S. 1A-1, Rule 17. If the named plaintiff is not the real party in interest, the magistrate should allow the real party in interest to be substituted.

Does the plaintiff agree to substitute the real party in interest?

If the named plaintiff is not the real party in interest, this is not cause for immediate dismissal. Rather, the magistrate should allow for the substitution of the real party in interest. If, after a reasonable time, the real party in interest has not been substituted, the magistrate may then dismiss the action. *Id.*

A common example of a violation of Rule 17 occurs when a property management company files a complaint on behalf of the property owner but names itself, rather than the property owner, as the plaintiff. In this situation, the property owner is the real party in interest because the property owner is entitled to the relief sought. The magistrate should allow the property management company to substitute the property owner as the plaintiff and should not dismiss the action unless the substitution does not occur after a reasonable time. If a substitution occurs, the magistrate should note that fact on the findings portion of the judgment form.

In some cases, substituting the real party in interest may require the magistrate to continue the case so that the proper plaintiff can be present. However, in summary ejectment cases, the case does not need to be continued to allow the property owner to be present if there is an agent present with personal knowledge of the case. G.S. 7A-216.

Generally, a party can be self-represented or represented by an attorney. If someone other than a licensed attorney represents a party, the representative could be guilty of the unauthorized practice of law. G.S. 84-4. In small claims court, there are two exceptions to this requirement. The first exception allows an agent with actual knowledge to appear on behalf of a property owner in summary ejectment cases. The second exception is that corporations and other business entities are not required to obtain legal representation. G.S. 7A-222(c). Since a corporation is not a natural person under the law, it must ordinarily be represented in court by an attorney. However, in small claims court, a corporation can be represented by an agent, such as a corporate officer or employee.

Does the plaintiff prove every element of each claim?

A defendant may, but is not required to, file an answer responding to the allegations in the plaintiff's complaint. G.S. 7A-220. If the defendant does not file an answer, the court must treat all allegations in the complaint as denied by the defendant. G.S. 7A-218. Because the allegations are deemed denied, the plaintiff must provide evidence sufficient to establish a prima facie case, that is, enough evidence to prove each element of the claim. G.S. 7A-222. If the plaintiff fails to do so, the magistrate may dismiss the claim. *Id.* The burden of proof in small claims cases is proof by the greater weight of the evidence, sometimes referred to as the preponderance of the evidence, which means that the facts needed to reach a judgment are more likely than not to exist.

When both parties are present, the exception allowing judgment on the pleadings in summary ejectment cases does not apply. Also, when both parties are present, the claim for money owed should not be severed from the claim for possession in a summary ejectment action. G.S. 7A-223(b1) only allows the claims to be severed if the magistrate cannot find personal service on the defendant, where service of the summons and complaint was accomplished by posting on the premises. Since the defendant's voluntary appearance in court is a substitute for personal service, G.S. 7A-223(b1) would not apply.

The defendant presents evidence to refute any elements, affirmative defenses, and/or counterclaims

Once the plaintiff has established a prima facie case, the defendant has the opportunity to introduce evidence to disprove any of the plaintiff's evidence. If the magistrate is persuaded by the defendant's evidence, then the plaintiff fails to meet the burden of proof on every element, and the claim should be denied.

Another way for the defendant to defeat the plaintiff's claim is to offer evidence of an affirmative defense. Even if the plaintiff has proven every element of the claim, the defendant can introduce new facts or legal theories that can negate or mitigate the defendant's liability. Common examples of affirmative defenses include the statute of limitations, duress, fraud, estoppel, and waiver. In summary ejectment cases, defendant-tenants may offer defenses of retaliatory eviction, self-help eviction, or violations of the Residential Rental Agreements Act. The defendant must be the one to raise an affirmative defense and support it with evidence offered during the hearing.

Counterclaims are allowed in small claims actions but are not required, meaning defendants can choose to bring counterclaims in the small claims action or file their claims in a separate action. G.S. 7A-219. If the defendant chooses to file a counterclaim in small claims court, the claim must meet the requirements for a small claims action in terms of the remedy sought and the amount in controversy. For example, a counterclaim asking the magistrate to order specific performance of a contract would not be allowed because a magistrate cannot order this type of relief. Additionally, the counterclaim cannot exceed \$10,000. If the amount in controversy exceeds \$10,000, the defendant may amend the complaint as described above.

The defendant has the burden of establishing a prima facie case for all elements of the counterclaim. If the defendant carries that burden, the plaintiff has the opportunity to introduce evidence to refute the defendant's evidence or to establish any affirmative defenses. When a counterclaim is filed, it is as if the magistrate is holding two hearings in one because the judgment will need to address both the relief sought in the complaint and the relief sought in the counterclaim.

Ready to enter judgment?

Once all of the evidence has been presented by both parties, the magistrate announces that the time for offering evidence has ended, and it is now time for the magistrate to announce the judgment of the court. The judgment is rendered when it is in writing and signed by the magistrate or rendered electronically by the magistrate. G.S. 7A-224. The judgment is entered when it is filed in the clerk's office. G.S. 1A-1, Rule 58. A judgment of a magistrate that is announced and signed in open court at the conclusion of the hearing is considered to be served on the parties. *Id.* If the judgment is announced at the close of the evidence, the magistrate does not have to mail copies of the judgment to the parties, so it is imperative that what the magistrate says and what is reduced to writing are the same. The best practice is for the magistrate to write or type the judgment and read directly from the judgment form.

The only remedy for the magistrate's legal error is an appeal to district court for a trial de novo, so the magistrate cannot correct legal errors. G.S. 7A-228. The magistrate may correct clerical errors but cannot make substantive changes that affect the underlying legal rights of the parties. G.S. 1A-1, Rule 60(a).

To announce the judgment, the magistrate should use the parties' names to avoid confusion. The magistrate should render judgment on all the claims raised by all the parties. The magistrate should inform the parties of their right to appeal the judgment to district court for a new trial. A party may give notice of appeal by announcing it in open court (the magistrate should indicate this on the judgment form) or by filing a written notice of appeal in the clerk's office within ten days after rendition of the judgment. G.S. 7A-228(b). To perfect

the appeal, the appealing party must pay the court costs within ten days of the rendition of judgment for summary ejectment cases and within twenty days of the rendition of judgment for all other cases. *Id.* The handout, “What Happens After Small Claims Court” (found at the end of this guide), can be made available to parties to explain their rights after the magistrate’s judgment is entered.

Reserve judgment

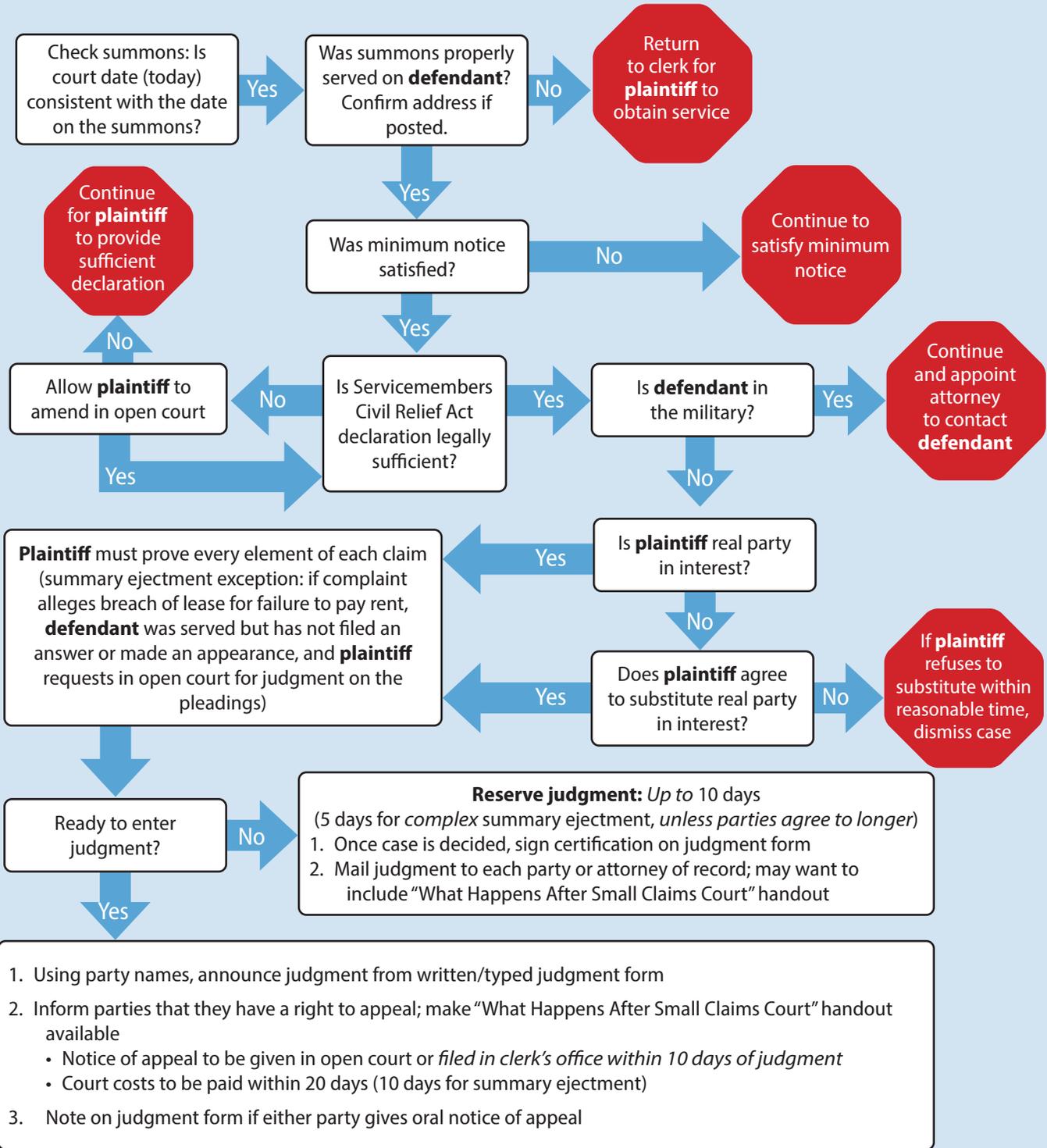
In the majority of cases, the magistrate will render and announce judgment at the conclusion of the evidence. If the magistrate is not ready to rule at the end of the hearing, the magistrate may exercise discretion to reserve judgment for a period of ten days, unless the case is for summary ejectment. G.S. 7A-222(a). In summary ejectment cases, the magistrate may reserve judgment if the parties agree to an extension of time or if the case is complex. G.S. 7A-222(b). The magistrate may then reserve judgment for five business days. *Id.* Complex summary ejectment cases include cases brought for criminal activity, breaches other than nonpayment of rent, evictions involving public or federally subsidized housing, and cases with counterclaims. *Id.*

Once the magistrate has decided the case, the magistrate should complete the judgment form and sign the certification indicating that the judgment has been served on the parties by mailing it to them. The magistrate should also serve the judgment on the attorneys of record, if any appear on behalf of the parties. G.S. 1A-1, Rule 5. The magistrate may also consider mailing a copy of the “What Happens After Small Claims Court” handout with the judgment to inform the parties of their rights after the magistrate’s judgment is entered.

Scenario

2

Plaintiff is present Defendant is *NOT* present



Scenario 2: Plaintiff is present; defendant is NOT present

Check the summons: Is the court date (today) consistent with the date on the summons?

In rare cases, the plaintiff may be given a court date that differs from the date on the summons. The defendant will have received the summons and will appear in court based on the date listed on it. The date on the summons controls. If the plaintiff appears in court on a date that is different from the date on the summons, the magistrate should instruct the plaintiff to return to court on the correct date.

If the plaintiff was given an incorrect court date that falls after the date on the summons, and the case was dismissed for failure to prosecute, the plaintiff may file a motion for relief from judgment under Rule 60(b)(1) for mistake, surprise, inadvertence, or excusable neglect to correct the error.

Was the summons properly served on the defendant? Confirm address if posted

There are a number of ways service can be accomplished. The majority of small claims cases are served by the sheriff's office. To confirm service of the summons and complaint on the defendant by the sheriff, the magistrate should look at the back of the summons. The sheriff may personally serve the defendant either by delivering the summons and complaint to the defendant or by leaving them at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion. G.S. 7A-217(1). In summary ejectment cases only, if personal service is unsuccessful, the sheriff may mail the summons and complaint to the defendant and post them in a conspicuous place on the premises that is the subject of the action. G.S. 7A-217(4). The magistrate should confirm that the address where the summons and complaint were posted matches the address of the property at issue in the case.

The plaintiff may also serve the defendant by registered or certified mail, signature confirmation, or designated delivery service, as provided in G.S. 1A-1, Rule 4(j). G.S. 7A-217(2). The plaintiff must file an affidavit with the court asserting the following information: a. that a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested, or with a designated delivery service; b. that it was in fact received as evidenced by the attached registry receipt, delivery receipt, or other evidence satisfactory to the court of delivery to the addressee; and c. that the genuine receipt or other evidence of delivery is attached. G.S. 1-75.10. The affidavit requirement may be satisfied by filing form AOC-CV-105, "Affidavit of Service of Process," or by submitting an original affidavit that contains the required information.

Service by publication under Rule 4(j1) is only available in small claims for actions to establish motor vehicle liens. G.S. 7A-211.1. The plaintiff must file an affidavit with the court showing the circumstances warranting the use of service by publication; information, if any, regarding the location of the party served which was used in determining the area in which publication was printed; and proof of service. G.S. 1A-1, Rule 4(j2)(3). In the case of publication, proof of service must include an affidavit of the publisher showing the publication and specifying the dates of the first and last publication and an affidavit of the mailing of a copy of the complaint or notice, as the case may require, made by the person who mailed it. G.S. 1-75.10(a)(2).

The defendant may also submit to the jurisdiction of the court by signing a written acceptance of service or by making a voluntary appearance in the case. G.S. 7A-217(3). A written acceptance of service is located on the back of form AOC-CVM-100, "Magistrate Summons." In small claims, a defendant makes a voluntary appearance when the defendant appears at the hearing or files a motion, answer, or counterclaim seeking the court's ruling, except for a motion objecting to personal jurisdiction.

If the case was properly served on the defendant, the court has the authority to enter judgment, and the case should proceed. If the case was not properly served on the defendant, the court does not have the authority to enter judgment. If the plaintiff wishes to pursue the action, the plaintiff will need to try a different address or method of service, which will require the plaintiff to go to the clerk's office for a new summons. Once the defendant has been served, the case can go forward.

Was minimum notice satisfied?

Since the defendant is not present in court, a knowing waiver of minimum notice cannot be accomplished. It is part of the defendant's due process rights to receive the minimum amount of notice required by statute before the case can proceed. For summary ejectment cases, minimum notice is two days before the hearing date, and for all other cases, it is five days. For an explanation of how to count time, see the section above, **Has the minimum notice of five days been provided (two days for summary ejectment)?** The magistrate should continue the case to comply with the minimum notice requirements.

Is the Servicemembers Civil Relief Act declaration legally sufficient?

The Servicemembers Civil Relief Act (SCRA) protects defendants who are active-duty military from having judgments entered against them while they may be deployed and defending the nation. *See* G.S. Ch. 127B, Art. 4; 50 U.S.C. 3901–4043. To protect servicemembers' rights, an SCRA declaration must be present in every civil case where the defendant is not present. The declarant (usually the plaintiff) can use the Department of Defense (DoD) website to determine the defendant's military status and attach the results to the declaration form, AOC-G-250. The declarant may also complete section four on the declaration form by providing specific facts that demonstrate how the declarant knows if the defendant is or is not in the military.

It is the magistrate's responsibility to determine whether the information provided by the declarant is legally sufficient to determine the defendant's military status. If the declaration is insufficient, the magistrate should not immediately dismiss the case. The declarant may be given an opportunity to amend the declaration, assuming the declarant has the missing information and is present in court. If not, the magistrate may continue the case to allow the plaintiff to complete a legally sufficient declaration. For example, if the plaintiff failed to file an SCRA declaration prior to the hearing and does not have the information in court to complete it, the magistrate may continue the case to allow time for the plaintiff to file a declaration.

If the declaration is legally sufficient and indicates that the defendant is not in military service, the case may proceed. If the declaration indicates that the defendant is in military service, the case cannot proceed until an attorney has been appointed to contact the defendant and determine whether the case should be stayed. The chief district court judge or their designee must sign the order appointing the attorney, so the magistrate should check with the chief district court judge regarding the procedure in their county for appointing an attorney in compliance with the SCRA. The case is continued pending the appointment of the attorney and the attorney's report to the court on efforts to reach the defendant and a recommendation on whether to stay the case for ninety days.

If the plaintiff (and therefore the court) is unable to determine whether the defendant is in military service, the case cannot proceed unless the plaintiff posts a bond with the court to indemnify the defendant if he or she is later found to be in military service. The amount of the bond is left to the discretion of the court. The only guidance is that the bond should indemnify the defendant against any loss or damage the defendant may suffer by reason of a judgment in favor of the plaintiff, should the judgment be set aside in whole or in part. The bond should remain in effect until expiration of the time for appeal or for setting aside a judgment under applicable federal or state law. While the time to appeal a small claims judgment is only ten days, the time to file a Rule 60 motion for relief from judgment can be a year or more. Since the bond may be substantial and held for a significant period, the plaintiff may wish to pursue additional information to confirm whether the defendant is in military service.

Is the plaintiff the real party in interest?

The plaintiff named on the complaint should be the real party in interest, that is, the party who is entitled to the relief sought. G.S. 1A-1, Rule 17. If the named plaintiff is not the real party in interest, the magistrate should allow the real party in interest to be substituted.

Does the plaintiff agree to substitute the real party in interest?

If the named plaintiff is not the real party in interest, this is not cause for immediate dismissal. Rather, the magistrate should allow for the substitution of the real party in interest. If, after a reasonable time, the real party in interest has not been substituted, then the magistrate may dismiss the action. *Id.*

A common example of a Rule 17 violation occurs when a property management company files a complaint on behalf of the property owner but names itself, rather than the property owner, as the plaintiff. The property owner is the real party in interest because the property owner is entitled to the relief sought. The magistrate should allow the substitution and should not dismiss the action unless substitution does not occur within a reasonable time. If a substitution is made, the magistrate should indicate that fact on the findings portion of the judgment form.

In some cases, substitution may require the magistrate to continue the case so that the proper plaintiff can be present. In summary ejectment cases, however, the case does not need to be continued if there is an agent present with personal knowledge of the case. G.S. 7A-216.

Generally, a party can be self-represented or represented by an attorney. If someone other than a licensed attorney represents a party, the representative could be guilty of the unauthorized practice of law. G.S. 84-4. In small claims court, there are two exceptions to this requirement. The first exception allows an agent with actual knowledge to appear on behalf of a property owner in summary ejectment cases. The second exception is that corporations and other business entities are not required to obtain legal representation. G.S. 7A-222(c). Since a corporation is not a natural person under the law, it must ordinarily be represented in court by an attorney. However, in small claims court, a corporation can be represented by an agent, such as a corporate officer or employee.

The plaintiff must prove every element of each claim

A defendant may, but is not required to, file an answer responding to the allegations in the plaintiff's complaint. G.S. 7A-220. If the defendant does not file an answer, the court should treat all allegations in the complaint as denied by the defendant. G.S. 7A-218. Since the allegations are deemed denied, the plaintiff must provide evidence sufficient to establish a prima facie case, that is, evidence sufficient to prove each element of the claim, even if the defendant is not present. G.S. 7A-222. If the plaintiff fails to do so, the magistrate may dismiss the claim. *Id.* The burden of proof in small claims cases is proof by the greater weight of the evidence, also known as the preponderance of the evidence. This means that the facts needed to reach a judgment are more likely than not to exist.

When the defendant is not present, the exception for judgment for possession based on the pleadings in summary ejectment cases is available. This exception applies when the complaint alleges that the defendant's failure to pay rent constitutes 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 this by checking the appropriate box under the findings section of the judgment form.

When the defendant is not present and has not otherwise made a voluntary appearance, the claim for money owed may be severed from the claim for possession in a summary ejectment action. G.S. 7A-223(b1) allows the claims to be severed if the magistrate cannot find personal service on the defendant because service was accomplished by posting on the premises. If the plaintiff requests severance, the magistrate should mark the appropriate box in the order section of the judgment form.

Ready to enter judgment?

Once all of the evidence has been presented, the magistrate announces that the time for offering evidence has ended, and it is now time to announce the judgment of the court. The judgment is rendered when it is in writing and signed by the magistrate or rendered electronically by the magistrate. G.S. 7A-224. The judgment is entered when it is filed in the clerk's office. G.S. 1A-1, Rule 58. A judgment that is announced and signed in open court at the conclusion of the hearing is considered to be served on the parties. *Id.* If the judgment is announced at the close of the evidence, the magistrate does not have to mail copies to the parties, so it is imperative that what the magistrate says and what is reduced to writing are the same. The best practice is for the magistrate to write or type the judgment and read directly from the judgment form.

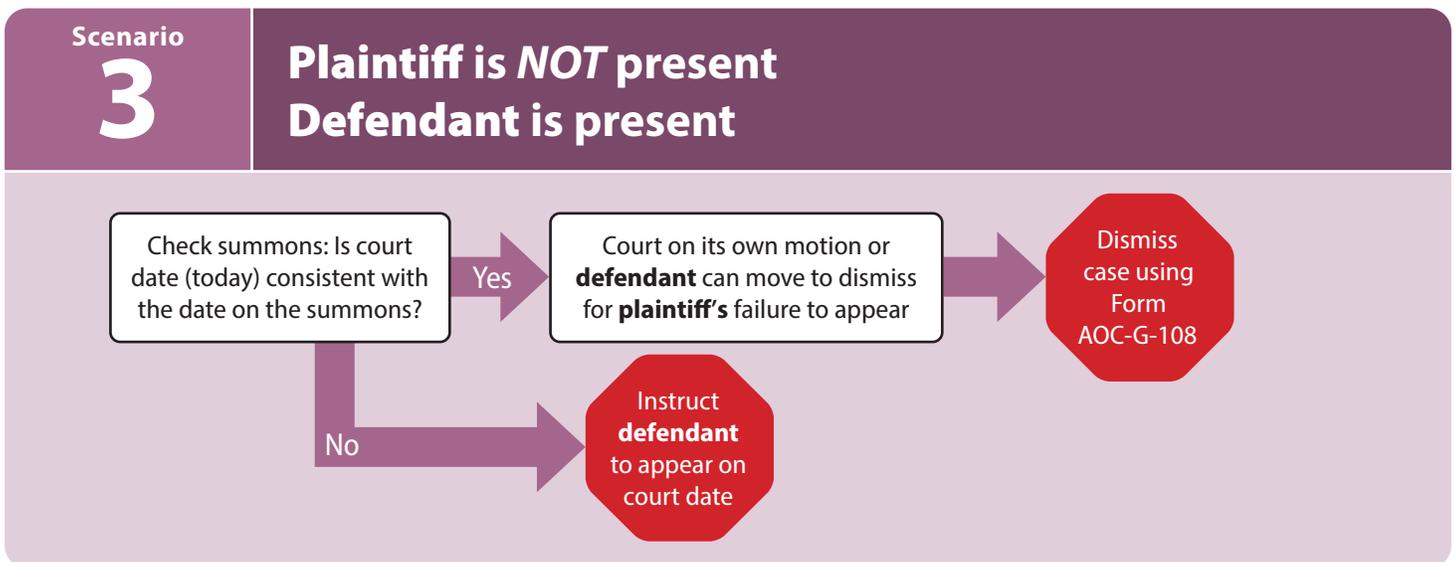
The only remedy for a magistrate's legal error is an appeal to district court for a trial de novo; the magistrate cannot correct legal errors. G.S. 7A-228. The magistrate may correct clerical errors but cannot make substantive changes that affect the underlying legal rights of the parties. G.S. 1A-1, Rule 60(a).

To announce the judgment, the magistrate should use the parties' names to avoid confusion and must render judgment on all claims raised by all parties. The magistrate should inform the plaintiff that they have a right to appeal the judgment to district court for a new trial. The plaintiff may give notice of appeal by announcing it in open court (which the magistrate should indicate on the judgment form). Since the defendant is not present, either party may also give notice of appeal by filing a written notice in the clerk's office within ten days after rendition of judgment. G.S. 7A-228(b). To perfect the appeal, the appealing party must pay the court costs within ten days of the rendition of judgment in summary ejection cases and within twenty days of the rendition of judgment in all other cases. *Id.* The handout, "What Happens After Small Claims Court," may be made available to explain the parties' rights after judgment is entered.

Reserve judgment

In the majority of cases, the magistrate will render and announce judgment at the conclusion of the evidence. If the magistrate is not ready to rule at the end of the hearing, the magistrate may exercise discretion to reserve judgment for a period of ten days, unless the case is for summary ejection. G.S. 7A-222(a). In summary ejection cases, the magistrate may reserve judgment if the parties agree to an extension of time or if the case is complex. G.S. 7A-222(b). The magistrate may then reserve judgment for five business days. *Id.* Complex summary ejection cases include cases brought for criminal activity, breaches other than nonpayment of rent, evictions involving public or federally subsidized housing, and cases with counterclaims. *Id.*

Once the magistrate has decided the case, the magistrate should complete the judgment form and sign the certification indicating that the judgment has been served on the parties by mailing it to them. The magistrate should also serve the judgment on any attorneys of record. G.S. 1A-1, Rule 5. The magistrate may also consider mailing a copy of the "What Happens After Small Claims Court" handout with the judgment to inform the parties of their rights after judgment is entered.



Scenario 3: Plaintiff is NOT present; defendant is present

Check the summons: Is the court date (today) consistent with the date on the summons?

The date on the summons controls. If the defendant is in court on a date that is different from the date on the summons, the magistrate should instruct the defendant to return to court on the date listed on the summons.

Court on its own motion or defendant can move to dismiss for plaintiff's failure to appear

If the defendant is in court on the date listed on the summons, the defendant may move to dismiss the case for the plaintiff's failure to prosecute. The court may also dismiss the case on its own motion. The dismissal should be entered using form AOC-G-108, "Order," and should indicate whether it is with or without prejudice.

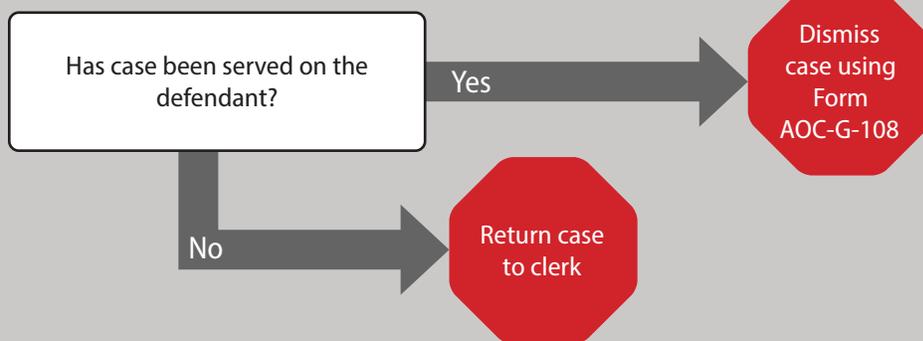
An involuntary dismissal for the plaintiff's failure to prosecute is generally with prejudice, unless the magistrate, in his or her discretion, determines that a dismissal without prejudice is appropriate. In making that decision, the magistrate should consider whether the plaintiff deliberately or unreasonably delayed the matter, the degree of prejudice to the defendant, and whether a less severe sanction (i.e., dismissal without prejudice) would be sufficient.

In rare cases, the plaintiff may be given a date to appear in court that differs from the date on the summons. The defendant will have received the summons and will appear based on the date on the summons. If the plaintiff was given an incorrect court date that is after the date on the summons and the case was dismissed for the plaintiff's failure to prosecute, a motion for relief from the judgment under Rule 60(b)(1) for mistake, surprise, inadvertence, or excusable neglect can be filed to correct the error.

Scenario

4

Neither party is present



Scenario 4: Neither party is present

If neither party appears on the court date indicated on the summons, the magistrate should confirm whether the case has been served on the defendant. If the case has been served, the court should dismiss the case using Form AOC-G-108 and indicate whether the dismissal is with or without prejudice. If the case has not been served, the magistrate should return the case to the clerk so that service can be completed.

HANDOUT

What Happens After Small Claims Court

Location of Clerk's Office: _____

Notice to Both Parties

If you are either the plaintiff (the person suing) or defendant (the person being sued) and are unhappy with the decision of the magistrate, you may appeal the case to district court. You may appeal either by telling the magistrate at the trial that you want to appeal or by filing a written request with the clerk of court within 10 days after the magistrate ruled in your case. If you want to file a written request, ask the clerk to give you a copy of form AOC-CVM-303, which is the notice of appeal form. If you give written notice of appeal to the clerk, you must also send a copy of the form to the opposing parties in your case.

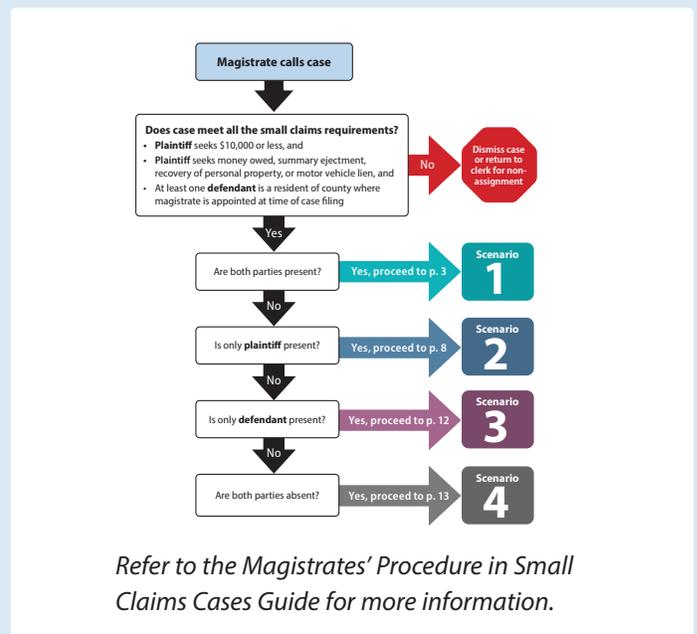
Whether you appeal in open court or file a written appeal, you **MUST PAY** \$150 court costs to the clerk. These costs must be paid within 20 days of the magistrate's ruling, unless you are a tenant appealing from judgment in a summary ejectment action, in which case the costs must be paid within 10 days of the magistrate's ruling. If you cannot pay the appeal costs, you may be able to qualify to file your appeal as an indigent. If you are a tenant appealing an eviction and you want to continue to live at the premises until the case is heard on appeal, you will be required to pay past due rent to the clerk and to sign an undertaking that you will pay rent into the court as it becomes due to keep the judgment from being carried out. If you meet the requirements for appeal as an indigent, you may be excused from the requirement that you pay past due rent in order to remain on the premises while the appeal is pending.

If one party appeals, there will be a completely new trial before a district court judge. (In some cases, the matter may be assigned first to an arbitrator. If that occurs, contact the clerk to have the procedure explained to you.) The clerk will notify both parties of the trial date (usually by mailing the trial calendar), and both must appear at that time. If you are the defendant and do not appear at trial, the plaintiff will probably win the case. Both parties should bring all evidence and witnesses to the trial. The trial before the district court judge will be more formal than the one before the magistrate; therefore, you may wish to consider hiring an attorney to represent you, although you are not required to do so.

Notice to Plaintiff (Party Suing)

If you won your case, your judgment against the defendant is good for 10 years. Before the end of the 10 years, you may bring another lawsuit to extend the judgment an additional 10 years. If you have won a money judgment, it becomes a lien against any land owned by the defendant, which means the defendant cannot sell that land without paying your judgment. Just because you have a judgment does not mean that you will be able to collect it. The defendant must have enough property to enable the sheriff to sell the property to satisfy the judgment. You may try as many times in the 10-year period as you wish to collect the judgment.

If you have won a judgment that the defendant owes you money, the court cannot try to help you collect that money unless you have given the defendant an opportunity to claim his or her exemptions. "Exemptions" is a legal term referring to a judgment debtor's right to shelter certain property from being seized and sold to satisfy a judgment. After the judgment is rendered, you must get two forms (AOC-CV-406, "Notice of Right to Have Exemptions Designated," and AOC-CV-415, "Motion to Claim Exempt Property") from the clerk. You must serve these on the defendant. The bottom of the "Notice of Right to Have Exemptions Designated"



tells you how to serve the forms. If you have not heard anything from the defendant within 20 days after you have served the forms, you may go to the clerk and ask to have an execution issued. If the defendant responds to your notice and claims exemptions, you may either agree with the exemptions claimed and ask the clerk to issue an execution for non-exempt property or (2) object to the claimed exemptions and have the district court judge determine the exempt property. After the district court judge determines the defendant's exemptions, you may ask the clerk to issue an execution for all non-exempt property. You will have to pay \$55 to have an execution issued—\$25 for the court and \$30 for the sheriff. Those costs will be added to the judgment to be repaid by the defendant. An execution is an order to the sheriff to seize and sell property of the defendant to satisfy the judgment. If you know of any property that belongs to the defendant, you should attach to the execution a description of the property and where it may be found to help the sheriff. The sheriff will sell any property that can be found and turn the proceeds over to the clerk of court, who will then turn the money over to you.

If the defendant pays all or part of the money owed to you directly, you **MUST** go to the clerk's office and indicate how much you have been paid.

If you have a judgment ordering the defendant to turn personal property over to you and if the defendant has not turned it over within 10 days after the magistrate enters the judgment, you may ask the clerk to issue a writ of possession to the sheriff. The cost to you for having the writ issued is \$25, plus \$30 for the sheriff. The sheriff will then try to recover the property from the defendant and turn it over to you. You may be asked to advance the costs of having the sheriff pick up the property.

If you are a landlord and have a judgment for eviction and the tenant fails to leave the premises within 10 days after the judgment was rendered and fails to complete the steps to stay execution of the judgment set out above, you may pay \$25 and have the clerk issue a writ of possession to the sheriff. The sheriff will then remove the defendant from the premises. You will have to pay the sheriff \$30. You may be asked to advance the costs of removing the tenant's property and one month's storage costs or you may request the sheriff, in writing, to lock the premises and you will then be responsible for handling the tenant's property in the manner required by the law.

If the defendant won a judgment against you on a counterclaim, read the following section, "Notice to Defendant (Party Being Sued)."

Notice to Defendant (Party Being Sued)

If a judgment is entered against you stating that you owe the plaintiff money and you want to pay the amount owed, it would be safer to pay the money to the clerk of court rather than to the plaintiff. If you do pay the plaintiff directly, make sure he or she notifies the clerk, so the judgment won't continue to be listed against you. If you cannot or do not pay the judgment, the plaintiff will serve a notice of rights on you, telling you that you must claim your exemptions, or they will be waived.

It is very important that you respond to that notice.

Exemptions are property the law allows you to keep from being taken from you to pay off judgments against you. If you fail to claim your exemptions, the sheriff will be able to seize and sell any property you own. The judgment is good against you for 10 years and may be extended for another 10 years. It becomes a lien against any land you own now or buy later until it is satisfied.

If you have a judgment against you to turn personal property over to the plaintiff, you may not prevent the property from being turned over to the plaintiff unless the plaintiff is a finance company and the judgment against you is to recover household goods that you listed as collateral in a security agreement with the finance company and the finance company did not lend you the money to buy those goods. In that case, the finance company must give you notice of your right to claim exemptions as described in the paragraph above and you may keep the household goods from being repossessed by claiming them as exempt.

If you are a tenant and have an eviction judgment against you, you will have to leave the premises unless you take the steps set out above to stay execution of the judgment for possession. If you do not leave voluntarily, the sheriff may forcibly evict you and remove and store your belongings for you or may leave them with the landlord who may dispose of them in the manner allowed by the law. You will be held responsible for the costs of moving you out.

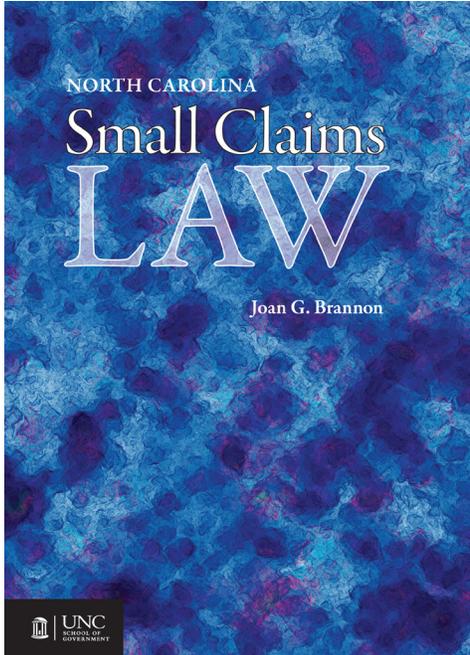
If you won a counterclaim against the plaintiff in which you were awarded money, read the section "Notice to Plaintiff (Party Suing)."

This handout was originally written by Dona Lewandowski and later updated by the author.



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