

File Under 'Boring But Important': Counting Time in Small Claims Court

Small claims magistrates know that the small claims statutes are filled with rules about time limits. For example, [small claims cases must be calendared for trial within 30 days of the complaint being filed](#), but [summary ejectment actions must be calendared within seven \(excluding weekends and holidays\)](#). A [defendant must be served no later than five days before trial](#) in all small claims actions other than summary ejectment, which requires [only a two-day notice](#). The list goes on. Magistrates often ask about how to calculate these various time periods and the purpose of this post is to provide information about that often confusing task.

Our starting point is [GS 1A-1, Rule 6\(a\)](#) of the Rules of Civil Procedure, which establishes clear rules for counting time, summarized as follows:

- The first day of the relevant event (e.g., a complaint is filed) is not included, but the final day is, *unless*
- The final day is a weekend or legal holiday on which the courthouse is closed, in which case the final day is the next business day (see also [GS 103-5](#)), and
- If the time period is less than seven days, intermediate weekend days and holidays are excluded.

Rule 6(a) is easy to apply. Take, for example, [GS 7A-214](#), which provides that, in all small claims cases other than 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.” Imagine that summons is served on Wednesday, June 1. Applying Rule 6(a), the fifth day after service is calculated as follows:

- Wednesday: Day 0 (don't count the first day)
- Thursday: Day 1
- Friday: Day 2
- Saturday/Sunday: Intermediate weekend days excluded because the time period is less than 7 days
- Monday: Day 3
- Tuesday: Day 4
- Wednesday: Day 5 (Earliest allowable day for trial)

As you can see, calculating time under Rule 6(a) is straightforward. What is sometimes less straightforward, unfortunately, is whether Rule 6(a) applies to a particular time period. [GS 1-593](#) states that “The time within which an act is to be done, as provided by law, shall be computed in the manner prescribed by Rule 6(a) of the Rules of Civil Procedure.” Rule 6(a) itself states that it applies to “computing any period of time prescribed or allowed (1) by these rules, (2) by order of

court, or (3) by any applicable statute, including rules, orders or statutes respecting publication of notices. . . .” (*numbering added by author*). But what is an “applicable statute”? Does the Rule apply to any and all time periods, so long as they appear in a statute? A definite answer to this question is surprisingly elusive.

What is clear is that Rule 6(a) applies to calculating time periods set out in the Rules of Civil Procedure and to similar statutory procedural rules such as those contained in [GS Ch. 7A, Art. 19](#), governing small claims court, as well as to statutes of limitations. [Winston v. Livingstone College Inc.](#), 210 NC App 486 (2011) (stating the Rule ““applies to all computations of time for statutory periods set forth in the General Statutes, including the statute of limitations. . . .”) Even when Rule 6(a) does not apply, the NC Supreme Court has noted the “well established general rule” that in calculating time, one terminal day is counted and the other excluded, [Harris v. Latta](#), 298 NC 555 (1979), and thus in many cases it matters little whether Rule 6(a) applies or not. See [Pearson v. Nationwide Mutual](#), 325 N.C. 246 (1989) fn. 3, in which Justice Exum specifically recognizes and chooses not to answer the question in that particular case.) When a Rule 6(a) question comes up in small claims court, the issue typically involves the third aspect of the Rule: business days or calendar days?

As noted above, Rule 6(a) provides that in calculating time periods of less than seven days, intervening weekends and legal holidays are to be excluded. Thus, in the example above concerning the five-day minimum notice period for small claims actions other than summary ejectments, the actual time between service and trial is seven calendar days. [GS 1A-1, Rule 1](#) states that the NC Rules of Civil Procedure – including Rule 6(a) -- apply “except when a differing procedure is prescribed by statute.” Often, the legal analysis in Rule 6(a) cases boils down to whether a statute prescribes a “differing procedure.”

Let’s look at a couple of examples, beginning with an easy one. [GS 42-28](#) requires a summary ejectment action to be calendared for trial at a time “not to exceed seven days from the issuance of the summons, excluding weekends and legal holidays.” Under Rule 6(a) seven days means seven calendar days; interim weekends and legal holidays are not excluded. Because GS 42-28 specifically says otherwise, however, Rule 6(a) does not apply to this time period, and we follow the statutory requirement requiring seven business days. (Note: If the final day falls on a weekend or holiday, however, the time for trial does not expire until the next day the courthouse is open, whether under Rule 6(a) or under GS 103-5).

Now let’s look at a slightly trickier example. [GS 42-29](#) requires service of process in summary ejectment actions to take place “within five days of the issuance of the summons, but at least two days prior to [trial], excluding legal holidays.” The phrase “excluding legal holidays” is a clear indication of “a contrary procedure”-- Rule 6(a) never excludes holidays but not weekends – and so Rule 6(a) does not apply. The statute thus requires that service be accomplished at least two calendar days before trial unless a holiday intervenes. If trial is scheduled for July 5, service of process must occur no later than July 2.

The more challenging question related to this statute is presented by the “five days” time limit applicable to the sheriff. If the phrase “excluding legal holidays” modifies both the five-day period and the two-day period, the sheriff has only five calendar days (excluding legal holidays) in which to serve the tenant. On the other hand, if Rule 6(a) applies to the five-day period, intervening weekends as well as holidays are excluded. Based solely on legislative history, my opinion is that Rule 6(a) does in fact apply to calculating the five-day period in this statute, but in truth the statute is ambiguous.

For small claims magistrates, the application of Rule 6(a) will come up most often in a procedural context and thus will generally apply absent inconsistent statutory language such as that set out above. The larger question of whether and to what extent Rule 6(a) applies to non-procedural time periods set out in the General Statutes (for example, GS 42-26’s requirement that rent must be at least five days late before a late fee may be imposed) awaits clarification by our legislature and appellate court.