

SMALL CLAIMS PROCEDURE

An Introduction: Part 3
Trial & Judgment

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**BUT FIRST,
A LOOK
BACK.**



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You call the case of Smith v. Jones. Smith and Jones are both present in the courtroom, but you notice that you do not have an SCRA affidavit. You should not proceed until Smith has had an opportunity to fill out the form, but it's fine for you, rather than the clerk, to administer the oath required to complete the affidavit.

YES True
or
NO False

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When you call the case of Smith v. Jones, both parties are present in the courtroom. You notice that Mr. Jones was served only yesterday. Do you

1. Inform the parties that you must continue the case for two days because the minimum notice period has not expired.
2. Proceed unless Mr. Jones says something.
3. Ask Mr. Jones if he's ready to proceed.
4. Tell Mr. Jones that he has a legal right to a continuance and ask whether he would like you to delay the trial for a week.

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MAKING THE CASE GO AWAY

Judgment on the Merits

You hear the evidence and decide the case on the merits: record decision on judgment form.
 "I've listened to the evidence, determined the facts, and applied the law, with this result: Judgment for ????"

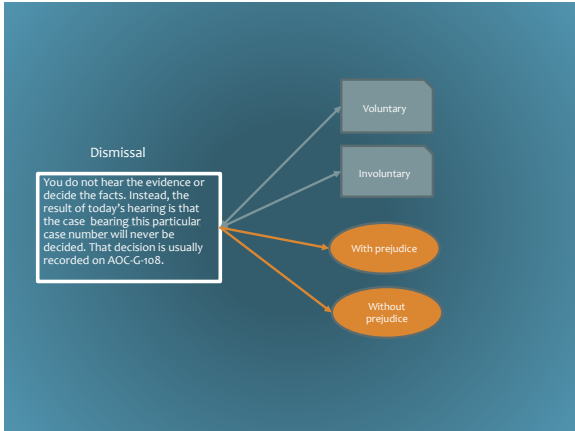
Dismissal

You do not hear the evidence or decide the facts. Instead, the result of today's hearing is that the merits of the case bearing this particular case number will never be decided. That decision is usually recorded on AOC-G-108.

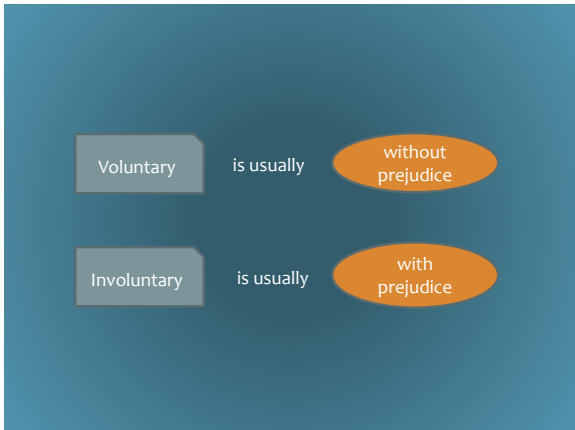
5

SMALL GROUP WORK

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Between May 31 and June 20, NC – in addition to many other states – had a moratorium in place prohibited landlords from filing cases to evict tenants for nonpayment of rent. Violation of the moratorium was a misdemeanor. Across the state, landlords violated the moratorium, some innocently and some knowingly. When small claims magistrates heard those cases in small claims court, should they have heard those cases and entered judgment on the merits?

Should those dismissals have been:
WITH prejudice **(YES)** or WITHOUT prejudice **(NO)**

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**FREQUENT
ERROR
ALERT!**

Whether a dismissal is with or without prejudice is governed by legal principles. Using *without prejudice* as a discretionary tool to give some plaintiffs a second bite at the apple should be limited to extraordinary situations, and you should be always be able to explain the reason for doing so.

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PLAINTIFF MUST PROVE EVERY ESSENTIAL ELEMENT BY GREATER WEIGHT OF EVIDENCE EVEN IF Δ IS NOT PRESENT AT TRIAL.*

Mandatory Rule #8

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AMENDING THE COMPLAINT



The law is liberal in allowing amendments:

- o Permission should be freely granted when justice so requires;
- o Pleadings are "considered amended" to conform to the evidence;
- o Continuance is authorized if necessary.

NOTE on the judgment form.

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PROBLEM

Plaintiff filed this lawsuit against John Butler but has learned that both John Butler Sr. and John Butler Jr. reside at the same address. Plaintiff 's contract was with JB Sr., and luckily JB Sr. was served, and is present for trial. Plaintiff asks to amend the complaint and summons to add "Sr." to the defendant's name.

Plaintiff's request in open court to amend the complaint and summons to add "Sr." to defendant's name was granted.

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JUDGMENT MUST DISPOSE OF ALL CLAIMS AS TO ALL PARTIES*

Mandatory Rule #9

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HOW TO ENTER JUDGMENT

- Give notice: separate your judgment from the evidence phase.
- Clearly identify the winner in announcing your decision.
- Briefly summarize the evidence and the law leading to the result.
- Provide essential information about what happens next.

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MAGISTRATE'S JUDGMENT IN SMALL CLAIMS CASE IS FINAL & MAY BE CHANGED ONLY BY (1) APPEAL, OR (2) SET ASIDE FOLLOWING HEARING UNDER RULE 60(B).

Mandatory Rule #10

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APPEAL

- An aggrieved party has the right to appeal to district court.
- The hearing is *de novo*.
- The appealing party must give notice of appeal within 10 days.
- The party must also pay additional court costs.



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MOTION TO SET ASIDE THE JUDGMENT (RULE 60)

- Some magistrates are authorized by the CDCJ to hear a motion to set aside for mistake or excusable neglect by a party.

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DRAFT 60(B) JUDGMENT

1. The undersigned has authority to rule on defendant's motion to set aside the judgment pursuant to Rule 60(b)(1) by virtue of consent of Chief District Court Judge _____ under N.C.G.S. 7A-228.
2. A magistrate has no authority to set aside judgments based on grounds other than those set out in Rule 60(b)(1), i.e., mistake, inadvertence, surprise, or excusable neglect.
3. In addition to demonstrating grounds for setting aside the judgment under Rule 60(b)(1), the law requires that defendant allege a meritorious defense.
4. Having heard and considered the evidence presented by both parties, the Court finds that defendant:
 - has demonstrated mistake, inadvertence, surprise, or excusable neglect justifying setting aside the judgment,
 - has not demonstrated mistake, inadvertence, surprise, or excusable neglect justifying setting aside the judgment, and the Court further finds that defendant (has has not) alleged the existence of a meritorious defense.
 Based on the above findings, it is the order of this Court that the judgment in [name and case number of case]
 - is set aside and that a new trial before a magistrate should be held.
 - remains in full force and effect.

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WHO SCREWED UP?

Magistrate?

The only remedy is appeal.

A party?

May appeal or may file Rule 60 motion.

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