

Small Claims Procedure/Basic School Study Guide, with Answers

1. As you know, the requirement that a plaintiff ask that a case be assigned to small claims court is satisfied by use of a small claims complaint form, and is rarely an issue. What are the other three requirements for a case to be heard in small claims court?

- Defendant must be a resident of the county.
- Amount in controversy must not exceed \$1,000.
- Must be summary ejectment, action for money owed, or action to recover personal property.

2. If the defendant has not been served when you call the case for trial, what should you do?
Inform the plaintiff that the defendant has not been served and ask whether the plaintiff wishes to (1) reschedule trial to allow more time to obtain service on defendant, or (2) take a voluntary dismissal.

Does your answer change if the defendant is present in the courtroom? Yes, because appearance by defendant is a satisfactory substitute for being served.

3. In a small claims action for summary ejectment, the plaintiff/landlord does not appear in court, but instead sends her secretary. The secretary shows you a document giving her power of attorney to act on behalf of her employer. The defendant is present and asks you to dismiss the case. What do you do?

You should grant defendant's request. Neither the plaintiff nor plaintiff's attorney is present. Regardless of having a power of attorney, the plaintiff's secretary is not authorized to appear on behalf of the plaintiff. The answer would be different if the secretary actually managed the property on behalf of the landlord.

4. The defendant has been served but is not present in the courtroom when you call the case for trial. What do you do?

You hear the evidence just as you would if the defendant were present, entering judgment based on whether the plaintiff has proven each essential element of the claim by the greater weight of the evidence.

5. In a small claims action for money owed, the defendant was served on Friday, July 7, and the trial is held Monday, July 10. The defendant is not present in court. What do you do?

Because the mandatory minimum between service and trial in an action for money owed is 5 business days, you continue the case to a day on or after that date.

6. In a summary ejectment action the plaintiff-landlord submits an SCRA affidavit stating that the plaintiff has been unable to determine whether the defendant-tenant is in the military. Attached to the affidavit is a DoD website printout indicating that the person's status is unknown, and the landlord explains that s/he does not know the birthdate or social security number of the tenant, John Smith. Do you accept the affidavit as sufficient?

No. The landlord is in an ongoing contractual relationship with the tenant and must make reasonable efforts to obtain information permitting completion of the affidavit. For example, the landlord might call, text, visit, email, or otherwise communicate with the tenant to ask about military service.

7. What is the most common example in small claims court of a violation of the real party in interest rule? What should a magistrate do when a violation occurs?

Property management company listing itself, rather than the property owner, as plaintiff. The magistrate should verify that company is not in fact owner of rental property and instruct company that you will be able to hear the case only after the complaint has been amended to substitute name of owner as plaintiff.

8. What AOC form should you use if you learn that the defendant has filed for bankruptcy? G-108

9. What should you do if the plaintiff checks the wrong box on the complaint form? *So long as the information on the complaint form is sufficient to give the defendant sufficient information to enable the defendant to prepare a defense, it doesn't matter. If there is any concern that the complaint may have been misleading or provide insufficient information, you should instruct the plaintiff to provide sufficient, accurate information on the complaint and re-serve the defendant, continuing the case.*
10. What difference does it make whether a case is dismissed with prejudice or without prejudice? *When a case is dismissed with prejudice, that means it has been dismissed "with prejudice to the right to re-file the same action against the same defendant at a later date." A dismissal without prejudice permits the plaintiff to refile the same case at a later time.*
11. Would you say that the formal rules of evidence apply strictly or leniently in small claims court? Give a reason for your answer. *The formal rules of evidence do not apply strictly in small claims court in regard to admissibility of evidence. The court may allow the introduction of virtually any evidence, so long as the court applies the usual rules to evaluate the validity and reliability of the evidence in determining what weight it should be given in reaching a decision.*
12. List the four steps for announcing your judgment in open court:
1. *Make a clear distinction between the close of the evidence and the announcement of your judgment.*
 2. *Identify the winning party by name: "Ms. Smith, the court is going to rule in your favor."*
 3. *Briefly explain the reason for your decision, referring at some point to "the law of NC."*
 4. *Inform the losing party of the right to appeal your decision and provide basic information about the next steps for each party. (Consider using a handout such as "What Happens Next" for this purpose.)*
13. What should you do if, at the end of the evidence, you're not sure about your decision? *Reserve judgment. How would you go about it? Inform the parties that you are taking their case under consideration and will mail them a copy of your judgment within the next ten days. Complete the certification form at the bottom of the judgment form. Have your judgment clocked in by the clerk and mail a copy to each party.*
14. List the two things a party must do to appeal your decision and explain in a few words what information you would give them about that. *A party must give notice of appeal within 10 days, either by informing you in open court after you have announced your judgment or by filing written notice of appeal in the clerk's office. The appealing party must pay the costs of appeal to the clerk within 20 days (10 if it's a summary ejection action).*
15. Imagine that after you've entered judgment, you realize that you made a legal error in your decision. What should you do? *Nothing, unless the error is extremely significant. For example, if you had no subject matter jurisdiction, tried a case when the defendant had not been served, or entered judgment after a petition for bankruptcy had been filed, you should file a motion asking a district court judge to set aside your judgment as void.*
16. What remedy is available to the party who is hurt by your error? *Appeal for trial de novo.*
17. Assume that you have been authorized by your chief district court judge to consider motions under Rule 60(b)(1) to set aside small claims judgments. Give an example of a typical situation in which you might grant such a motion.
- Either the plaintiff or defendant was involved in an automobile accident on the way to court and thus failed to appear for trial.*