

SMALL CLAIMS APPEALS

Orientation for New District Court Judges
March, 2021

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Small Claims: Why We Love It

- Fast (SE within 7 business days, 30 for others)
- Easy (more about this in a moment)
- Cheap
 - *Filing fee lower*
 - *"You don't need a lawyer!"*
 - Corporations may appear through agent.
 - Landlords may appear through agent with personal knowledge.

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What to Expect in Small Claims

- Often, no one in the courtroom (which is often not a courtroom) is an attorney.
- Form pleadings/form judgments
- Relaxed rules of evidence, including testimony in the narrative
- Simplified rules of procedure, mostly contained in GS 7A, Art. 19

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Significant procedural modifications

- Limited jurisdiction:
 - \$10,000 maximum amount in controversy
 - Restricted to cases seeking remedy of:
 - Money judgment
 - Recovery of personal property
 - Summary ejectment
 - At least one defendant must reside in the county
- No service by publication. Service by posting available in SE actions
- 12(b)(6) motions not allowed
- Defendant is not required to file an answer
- No default judgments
- Counterclaims are never compulsory

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“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 jury.”
GS 7A-228(a)

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3 Ways You Might Encounter a Small Claims Case Before Final Disposition Before the Magistrate

1. Defendant files written challenge to venue or personal jurisdiction prior to or in answer. GS 7A-221: “Assignment to the magistrate is suspended. . . .”
Waived if not filed in time.
Case is returned to small claims if dcj rules for plaintiff.
2. Defendant files answer denying plaintiff’s title in SE action. GS 7A-223.
3. Case is (wrongfully) transferred to you. See GS 7A-215.
Because you have no subject matter jurisdiction in a case “transferred” to you by a magistrate, your options are (1) to send the case back to the magistrate, (2) send the case back to the clerk, or (3) dismiss the case for lack of SM jurisdiction.

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Appeal for trial de novo: Is it properly before you?

- Must be by aggrieved party.
- Notice of appeal may be given in open court when magistrate renders judgment, or by filing with clerk within ten days of entry (file-stamped). (AOC-CVM-303)
- Must pay costs of appeal within 20 days (10 if SE) or automatically dismissed.
- Appeal by indigent? Detailed statutory procedure.
- Appellant waives right to jury trial by failing to request prior to expiration of appeal period. Appellee has ten days from being served with notice of appeal/payment of costs to make written request served on all parties and clerk.
- Governing statutes: GS 7A-226 to 7A-230.

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What's different about a case that originates in small claims court?

- Corporations not required to be represented by attorneys. GS 7A-228(e).
- Defendant is not required to file an answer, unless ordered to do so by DCJ. (GS 7A-229: judge "may order repleading or further pleading by some or all of the parties.")
- If defendant does not file answer, defendant may rely on unpled affirmative defenses.
- In addition to requiring one or both parties to file additional pleadings, DCJ has authority to "try the action on stipulation as to the issue or . . . try it on the pleadings as filed." GS 7A-229.
- If appellant fails to appear for trial, court may dismiss appeal and thus reinstate magistrate's judgment.

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not What's different about a case that began in small claims court?

- Plaintiff's AOC complaint form is subject to scrutiny pursuant to Rule 12(b)(6)*
- Small claims amount in controversy limits no longer in effect.
- DCJ "shall allow appropriate counterclaims, cross-claims, [etc.]." GS 7A-220.
- DCJ is required to make findings of fact and conclusions of law in support of judgment.
- Appellant may as usual dismiss appeal. More notably, plaintiff make take voluntary dismissal of **case** (not appeal) pursuant to Rule 41(a), effectively erasing small claims judgment.

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2 Ways You Might Encounter a Small Claims Case After Final Disposition Before the Magistrate-No Appeal

- Rule 60(b) motion to set aside small claims judgment, particularly for grounds other than Rule 60(b)(1): mistake, inadvertence, or excusable neglect. GS 7A-228(a).
- Motion for sanctions pursuant to Rule 11.
- Others? Almost certainly.
 - *E.g. motions related to enforcement of small claims judgments*

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Example

LL files complaint for SE, alleging \$650 in rent arrears. LL tells T she will dismiss SE action if T pays all rent due plus court costs prior to trial. T pays and then leaves to care for ailing mother. LL appears at trial but does not take dismissal or mention payment, obtaining judgment for SE. LL takes no action to obtain writ of possession until 2 months later, when T is late with rent. LL then seeks writ. T's Legal Aid attorney files a motion to set aside judgment under Rule 60(b)(5) as well as motions for TRO and preliminary injunction to stop execution of writ while 60(b) hearing is pending.

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PART 2

Summary Ejectment Appeals:
What You Absolutely Have to Know

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Summary ejectment is special. It's statutory law, but very old. The statutes have been amended piecemeal and are poorly organized. There are hundreds of cases interpreting some statutes, as well as many old statutes that have never been discussed by the appellate courts.

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Substantive Law: Essential Elements & Common Defenses

1. Breach of a lease condition for which re-entry is specified.
2. Failure to pay rent.
3. Holding over.
4. Criminal activity.

Most important requirement: Absence of "simple landlord-tenant relationship" = no subject matter jurisdiction.

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Many Special Procedural Rules for SE Cases in Small Claims Court

- Landlord is rpil and must be named as plaintiff but may appear through agent with personal knowledge.
- Scheduled for trial within 7 business days
- Sheriff must serve within 5 days, but at least 2 calendar days prior to trial
- Service by posting permitted
- Recent law allows severance of claims
- Continuances restricted to good cause/5 days unless both parties consent
- Magistrate must announce judgment in open court at conclusion of trial unless case is "more complex," in which case judgment must be rendered within 5 business days.
- Costs of appeal must be paid within 10 days
- Writ of possession must be enforced within 5 business days

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Many Special Procedural Rules for SE Cases in Small Claims Court

- Landlord is rpil and must be named as plaintiff, but may appear through agent with personal knowledge.
- Scheduled for trial within 7 business days
- Sheriff must serve within 5 days, but at least 2 days prior to trial
- Service by posting permitted/sufficient due process to allow judgment for possession, but not for money damages.
- New law allows severance of claims
- Continuances restricted to 5 days
- Magistrate must announce judgment in open court at conclusion of trial unless case is "more complex," in which case judgment must be rendered within 5 business days.
- Costs of appeal must be paid within 10 days
- Writ of possession must be enforced within 5 business days

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#1 on the Most Confusing Defense List: Violation of the RRAA

Rule: Even when a tenant does not file a counterclaim, evidence that LL has violated the RRAA may require a "credit" against past-due rent.

Damages = FRV of property in compliance – FRV of property as is
for duration of time after reasonable notice/opportunity to repair

E.g.: Baseboard heaters in 2 rooms haven't worked since T moved in 6 months ago

FRV with BB heat in all rooms: \$500/mo

FRV without heat in two rooms: \$400/mo.

Damages: \$600.

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Consequence of \$600 rent abatement credit:

- Breach of lease condition: default in rent.
 - If total rent due is \$600 or less, LL loses.
 - If total rent due is \$601+, LL wins.
- Failure to pay rent
 - If total rent due is \$600 or less, LL loses.
 - If total rent due is \$601, T can avoid eviction by tendering amount owed after \$600 credit.

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Special Note About Stay of Execution

- A small claims judgment awarding possession is enforceable after 10 days even if tenant gives notice of appeal, unless tenant follows separate and distinct procedure to stay enforcement. See GS 42-34 & -34.1.
- Appeal is not rendered moot by tenant's failure to obtain a stay. If tenant prevails on appeal, the tenant is entitled to be restored to possession and to recover damages for wrongful dispossession. GS 42-35, 42-36.
- If tenant has obtained stay and moneys are being held in clerk's office, judgment should direct their disbursement.
