

Mandatory Rule #8: Whether or not  $\Delta$  is present at trial,  $\pi$  must prove the essential elements of the case by the greater weight of the evidence (subject to one exception).

The degree of formality with which a small claims trial is conducted lies within the discretion of the magistrate. It is appropriate for magistrates to question witnesses and to provide the parties with information about small claims procedure, so long as the magistrate is careful to avoid asking leading questions, advising a party about the best course of action, or acting in a manner showing favoritism to either party.

### Trying a Case with a Counterclaim

Recommended: Conduct the trial in two parts, trying the primary claim first and then separately hearing evidence on the counterclaim. After you've heard and decided both cases, calculate the total amount of the judgment, setting off as necessary. Enter one judgment, making clear how you ruled on both cases and what damages were awarded in each case.

### Amending the Complaint

The law says that a judge *should freely allow* a  $\pi$  to amend a complaint. Assuming the statute of limitations has not run, there is little reason to deny such a motion. Generally, the only issue of concern is whether fairness requires a continuance so that  $\Delta$  -- particularly an absent  $\Delta$  -- can be given notice and make any necessary adjustments to defend against the amended claim.

*Amendment to correct name?* Allowed, provided that the correct person was served. Not allowed to substitute a different  $\Delta$ .

*Amendment to substitute remedy?* Common in actions to recover property where creditor discovers property is no longer in  $\Delta$ 's possession. Creditor should be allowed to amend complaint to request money owed, but take care that  $\Delta$  has notice of amendment.

*Amendment to amount requested?* Allowed, but be sure  $\Delta$  has notice of increased amount.

*Amendment to change theory of recovery (aka, checked the wrong box)?* Unnecessary, but allowed. Again, issue is notice to  $\Delta$ .

Q: What is the procedure for amending a complaint?

A: In small claims court a motion to amend is often made during trial. In this circumstance, it is not necessary for the  $\pi$  to physically write the amendment on the complaint. It is preferable for the magistrate to write the amendment on the judgment form.

## ENTERING JUDGMENT AND OTHER POST-TRIAL ISSUES

Mandatory Rule #9: The judgment must contain the magistrate's decision about all claims in relation to all parties.

Usually, small claims judgments are announced in open court. If the magistrate prefers, the magistrate may reserve judgment for up to 10 days. Note the exception for summary ejectment cases. GS 7A-221(b) prohibits a magistrate from reserving judgment unless the parties agree or the case is complex. If the magistrate reserves judgment because the case is complex, judgment must be rendered within five business days.

Q: What's the procedure for reserving judgment?

A: The magistrate should inform the parties that they will receive a copy of the written judgment within the next two weeks, and explain the procedure for appeal. The magistrate must complete the section at the bottom of the judgment form labeled *Certification*, have the judgment stamped in by the clerk, and mail a copy to both parties.

Q: Can a magistrate correct a clerical error in a judgment?

A: A magistrate can correct a clerical error at any time, on the magistrate's own motion. Note that a *clerical error* is an error that does not affect the legal rights of the parties. For that reason, notice to the parties is usually not necessary. An example would be misspelling the name of one of the parties. See Small Claims Law p. 41 for details of procedure.

### Steps in Entering Judgment

Make a clear division between the close of evidence and your readiness to announce your decision.

Announce your decision, clearly identifying by name the party you're ruling in favor of.

Provide a brief explanation of the legal reason for your decision.

Allow the parties to ask questions about next steps, and inform the losing party of the right to appeal.

Mandatory Rule #10: The judgment in a small claims action is a final judgment and may be changed only by appeal or by an order entered pursuant to Rule 60(b) setting the judgment aside.

## Appeal

The remedy for a magistrate's legal error is appeal to district court for trial *de novo*.

Q: What is trial *de novo*?

A: When a small claims judgment is appealed, the district court judge conducts a whole new trial. The parties are not bound by their decisions at the small claims level: they may make new arguments, present new evidence, and even change the remedy they're seeking in the lawsuit.

Q: What is the procedure for appeal?

A: A party may give notice of appeal in two ways, either by notifying the small claims judge in open court, or by filing a written notice of appeal with the clerk within 10 days. An appealing party must pay costs of appeal within 20 days, or else appeal is dismissed. **Note: costs must be paid within 10 days in summary ejectment actions.** A party who cannot afford to pay the costs of appeal may be excused by qualifying as indigent.

Q: What is the effect of the small claims judgment while an appeal is pending in district court?

A: A judgment for money is automatically stayed when a party gives notice of appeal. An judgment awarding possession of real or personal property is not automatically stayed and so may be enforced just as if there were no appeal. **In summary ejectment actions a tenant appealing a judgment in favor of a landlord can delay enforcement of the judgment through a procedure in the clerk's office requiring the tenant to pay the undisputed rent in arrears and sign an undertaking to pay rent as it comes due.**

Q: What happens after the small claims judgment?

A: A  $\pi$  who wins in small claims court is not permitted to enforce a judgment immediately; first, the 10-day period during which the  $\Delta$  may give notice of appeal must end. Only then may the  $\pi$  initiate enforcement procedures by going to the clerk. There is an additional cost to

enforce a judgment, which will be added to the costs owed by the losing party. The next steps vary, depending on whether the judgment is for money or recovery of rental or personal property. Some magistrates provide the parties a copy of the handout in the Reference Section titled “What Happens After Small Claims Court.”

### **Motions to Set Aside Judgment under Rule 60(b)**

Rule 60(b) sets out six reasons for setting aside a judgment. The first ground is that the judgment should be set aside because of excusable neglect, mistake, or surprise. In small claims, the “excusable neglect” at issue almost always involves a party’s failure to appear. When a judgment is set aside under Rule 60(b), the case will be re-tried, usually based on the original complaint with no need to repeat service of process.

Q: What is the procedure for deciding whether to set aside a judgment?

A: Typically, the losing party files a motion to set aside the judgment, specifying the reason. Motions must be filed within a reasonable time, usually within one year. The other party is given notice of the motion, and the court conducts a hearing on whether the motion should be granted.

Q: Who conducts the hearing?

A: A district court judge generally hears Rule 60(b) motions, but some magistrates are authorized by their chief district court judge to hear motions provided that the motion is based on Rule 60(b)(1) (mistake, excusable neglect, inadvertence, or surprise.)

Q: How does a magistrate determine whether the judgment should be set aside?

A: The test is whether the party who made the error gave the case “such attention as a man of ordinary prudence usually gives to important business affairs.” If the moving party is  $\Delta$ , she must also allege that she has a meritorious defense to  $\pi$ ’s claim. Finally, our appellate courts have repeatedly stated that a motion under Rule 60(b) is not to be used as a substitute for appeal. If the error in question was a legal error made by the magistrate, the judgment will not be set aside (unless the error was so serious that it renders the judgment void).

Q: If a magistrate decides to set aside the judgment, how is this decision implemented?

A: The magistrate enters a written order setting aside the judgment, making appropriate findings about the grounds for doing so and, if the motion was filed by the  $\Delta$ , the existence of a meritorious defense. The magistrate should then re-calendar the case for trial.

