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# SMALL CLAIMS PROCEDURE

Mandatory Rule #1: You must have subject-matter jurisdiction.

## IS IT A SMALL CLAIMS ACTION?

What is the principal relief sought? Summary Ejectment  
Money Owed  
Return of Personal Property

***Not Coercive Judgment***  
***Not Action to Recover Real Property***

In case of a claim for \$\$ or personal property, what is amount in controversy? Maximum \$10,000

Does at least one  $\Delta$  reside in your county?

Q: What should the magistrate do if a case does not meet one of these requirements?

A: The magistrate should not hear the case.

- ≈ If the case isn't the type that may be heard in small claims: dismiss.
- ≈ If the amount in controversy too high: may be cured in some cases by amending complaint. Otherwise, dismiss or return to clerk.
- ≈  $\Delta$  isn't a resident: dismiss or return to clerk

### Amount in Controversy Rules

- ~ Amount in controversy is determined as of time case is filed.
- ~ Claim-splitting is not allowed.
- ~ In actions for return of personal property, amount in controversy is FMV.
- ~ In summary ejectment actions in which  $\pi$  seeks only possession, amount in controversy requirement does not apply.

Q: Where does a corporation “reside”?

A: Corporations that have authority to do business in NC reside in either the county in which the principal office is located or the county in which the corporation maintains a place of business. If neither of these applies to a particular corporation, it resides in any county in which it is regularly conducting business. G.S. 1-79.

Q: What if  $\pi$  has sued more than one  $\Delta$ , but only one  $\Delta$  resides in the county?

A: The law requires only that at least one  $\Delta$  reside in the county.

Mandatory Rule #2: You must have jurisdiction over the  $\Delta$ : either service of process or voluntary appearance.

## HAS $\Delta$ BEEN SERVED?

Check the file for one of the following: Completed return of service on back of summons  
 $\pi$ 's affidavit & postal receipt  
 $\Delta$ 's written acceptance of service  
 $\Delta$  has filed motion, answer, or counterclaim  
OR  
 **$\Delta$  is present in court**

Q: What should the magistrate do if the summons and complaint have not been served?

A: Continue the case to allow additional time for service. Use AOC Form G-108.

Q: What if  $\pi$  has sued more than one  $\Delta$ , but only one has been served?

A:  $\pi$  must choose between

- ≈ requesting continuance to pursue service on other  $\Delta$ s, or
- ≈ taking a voluntary dismissal against unserved  $\Delta$ s and going ahead against  $\Delta$  that has been served.

### Service on a Corporate $\Delta$ :

- ≈ Delivering to registered agent, or
- ≈ Serving officer, director, or managing agent by
  - Delivering copy
  - Leaving copy in office with person apparently in charge
  - Mailing or using delivery service (certified, signed receipt)

**Hint:** Be careful not to confuse service of process with the rule about at least one  $\Delta$  residing in the county. They are two separate requirements.

### HAVE ANY OTHER DOCUMENTS BEEN FILED WITH THE CLERK?

Check the file for:

- an answer (which may also contain a counterclaim)
- a motion for continuance
- a motion to dismiss for
  - ≈ failure to state a claim [Rule 12(b)(6)]
  - ≈ lack of personal jurisdiction
  - ≈ improper venue

Q: What difference does it make if  $\Delta$  files an answer?

A: It makes very little difference. Quite often, answers are filed in cases in which  $\Delta$  is represented by an attorney unused to small claims practice who are unaware that answers are not required in small claims court. Filing an answer in a case does constitute a voluntary appearance, though, and so it may be important in an action in which  $\Delta$  has not been served and is not present in court.

Q: How should I handle a pre-trial motion for a continuance?

A: The law favors, but does not require, granting a continuance if both parties join in the request.

If a request for a continuance is made by only one party, the law requires that party to demonstrate good cause.

If the magistrate grants a continuance, s/he must be certain that the other party receives

notice of the new trial date and time.

In summary ejectment actions, a continuance is permitted only for good cause and for a maximum of 5 business days unless both parties agree to a longer period.

<p><b>LOCAL PRACTICE ALERT:</b> Be sure to find out what your county's policy is about the procedure for pre-trial requests for a continuance.</p>
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Q: What should I do if  $\Delta$  files a Rule 12(b)(6) motion to dismiss the case for failure to state a claim for relief?

A: This motion is not allowed in small claims court. GS 7A-216. Because it is a common motion in general civil actions, this error is usually made by an attorney unused to small claims practice and unfamiliar with the rules of small claims procedure set out in GS Ch. 7A, Art. 19. A magistrate should either instruct the attorney to withdraw the motion or deny it as improperly made.

Q: What if the motion is actually valid in the sense that the complaint is virtually blank or so poorly-stated that it in fact does fail to adequately notify  $\Delta$  of the underlying basis for the lawsuit sufficient to permit  $\Delta$  to identify potential defenses?

A: GS 7A-216 authorizes the magistrate to direct the  $\pi$  to amend the complaint to provide adequate details, and to grant whatever continuances may be necessary to allow  $\Delta$  to respond to the new information.

Q: What should I do if  $\Delta$  files a motion to dismiss pursuant to GS 1A-1, Rule 12(b)(2) and/or (3), challenging venue or personal jurisdiction?

A: GS 7A-221 provides that assignment to the magistrate is automatically suspended if a  $\Delta$  files one of these motions. The clerk must schedule the motion for hearing before a district court judge.

NOTE: These objections are waived unless filed in writing prior to trial. A  $\Delta$  who objects to personal jurisdiction or venue for the first time at trial will not be heard, unless the defect is so severe as to deprive the court of total authority to hear the case. E.g., the

complaint and summons clearly states that  $\Delta$  is not a resident of the county, thus depriving the small claims court of subject matter jurisdiction.

## BEFORE YOU HEAR THE EVIDENCE

Complete the *Pre-Trial Checklist*

Determine whether both parties, or their *authorized representatives*, are present.

Mandatory Rule #3: A party may appear only pro se (on his own behalf) or through an attorney unless an exception applies.

Who is an authorized representative?

The party's attorney

An agent

SE cases: with personal knowledge

Corporate party: officer or employee

Special cases: estates, guardians (ad litem & otherwise)

Who is NOT an authorized representative? Anyone having only *power of attorney*

**If neither party is present, or only  $\Delta$  is present:** Dismiss the case for *failure to prosecute*, using AOC-G-108.

Q: If  $\Delta$  appears and  $\pi$  does not appear, is it appropriate to continue the case to allow the  $\pi$  another chance to appear?

A: No.

Q: In this situation, should I mark my dismissal as *with* or *without prejudice*?

A: If  $\Delta$  asks you to dismiss the action, dismissal with prejudice is appropriate unless some special circumstances dictate a different result.

Q: What do these terms actually mean?

A: When a case is dismissed *without prejudice*, the  $\pi$  may refile the same lawsuit. Unless barred by a statute of limitations, the only consequence to the  $\pi$  for failing to appear is paying court costs when the  $\pi$  files again.

When a case is dismissed *with prejudice*, it is a final determination that  $\Delta$  is not liable for the particular fault alleged in the lawsuit. If  $\pi$  attempts to bring a second lawsuit against the same  $\Delta$  for the same reason,  $\Delta$  is entitled to have the second case dismissed. And the fact that  $\Delta$  is not liable for that wrong may well be binding in future lawsuits involving the same events and circumstances.

Q: If neither party appears, is the dismissal with or without prejudice?

A: GS 1A-1, Rule 41(b) states that a dismissal is with prejudice unless it falls into certain specified exceptions not relevant here, or unless the court specifically indicates to the contrary. The court has authority to so specifically indicate, but in light of the rule's "default setting" the rule seems to contemplate a general rule favoring dismissal with prejudice, with the court having authority to deviate from that when justice so requires.

	<p><b>Local Practice Alert:</b> Not all magistrates follow this practice. Some magistrates dismiss with prejudice if the <math>\Delta</math> appears and the plaintiff does not, while others require the <math>\Delta</math> to appear AND to request dismissal.</p>	
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