

## Summary Outline for Session 3: Detecting and Handling Procedural Issues at an Early Stage of the Proceeding

Related handouts: *Pre-Evidence Checklist & What Might Come Up*.

### Detecting Procedural Problems (= Issue Spotting)

SRL are going to make procedural errors – LOTS of them – and they don't necessarily require any action on your part. The first step in Detecting and Handling . . . is deciding which issues require your attention. Examples are issues fundamental to the lawful operation of the court, issues posing a risk for eventually causing problems downstream, or issues which imperil the court's ability to reach a fair and just result on the merits. Identifying the most common issues requiring some action by the small claims magistrate allows you to be prepared to respond.

### Issues Fundamental to the Lawful Operation of the Court:

#### ❖ Subject-matter jurisdiction

- Did at least one defendant reside in the county at the time the complaint was filed?
- Is the plaintiff seeking to recover an amount greater than that allowed in your county?
- Is the action one for money damages, SE, or to recover personal property?

#### **Solutions to subject-matter jurisdiction problems**

*Re* residence of defendant: In my opinion, the case must either be returned to the clerk to be placed on the district court calendar or be dismissed on your own motion if the complaint and summons reveal this jurisdictional defect on their face.

If the jurisdictional defect is not apparent from the written process, the magistrate has no duty to inquire into the defendant's county of residence absent some indication of a problem. However, subject matter jurisdiction is not waivable, and your judgment will be void if the requirements are not satisfied, regardless of whether you had any reason to consider the question.

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*Re* amount in controversy violation: Strictly speaking, the same rule should apply to this violation as to the residency defect discussed above. It is extremely common, however, for magistrates to offer the plaintiff an opportunity to "fix" the defect by amending the complaint to request a reduced amount falling within the allowable limit. The legal effect of this amendment is not entirely clear; there is some argument that the plaintiff is making a binding stipulation about the amount of damages s/he has suffered, but one Court of Appeals case failed to apply this rule, albeit without discussion.

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*Re* claims not falling within the list of those permitted: The most common example of this is a claim for SE not involving a simple landlord-tenant relationship. The legal solution is to dismiss the claim for want of subject matter jurisdiction. Because the same rule applies to SE actions in district court, it is improper to return the case to the clerk to be calendared in that court. The other instance in which a plaintiff asserts a claim falling outside the magistrate's jurisdiction usually involves a request for some sort of coercive order paired with a permissible request. For example, in connection with a claim to recover personal property – an automobile – the plaintiff might request that you order DVM to amend the title to the vehicle to reflect his ownership. In this instance, you should hear and decide the claim for possession, but specifically find that you did not consider the request for a court order to DMV due to that remedy falling outside your jurisdiction.

#### Avoiding a void judgment

- ❖ -Has the defendant been served or made a voluntary appearance?
- Has the defendant filed a petition for bankruptcy?
  
- ❖ Requiring parties to comply with the law
  - Is either party represented by someone engaged in the unauthorized practice of law?
  - If the defendant is an individual not present in court, has plaintiff provided a satisfactory SCRA affidavit? (Ditto affidavit re provision of blank Declaration)

#### Issues That Might Cause Problems Downstream

- ❖ Real party in interest rule

Is the named plaintiff the person actually entitled to the requested remedy?

NOTE: The estate of a deceased person is the rpii – NOT the deceased person. This is also true in the parallel situation in which the defendant is deceased.
  
- ❖ Incorrect or incomplete names of parties

Watch out for businesses & business names!

Business entities required to register with Secretary of State (<https://www.sosnc.gov/>) are virtual people – individuals capable of owning property, owing money, being bound by contractual obligations, etc. The name(s) of the persons who own these entities are usually unimportant from a legal point of view.

Businesses not required to register with Secretary of State are NOT independent legal entities capable of being sued or suing – they are a legal nullity. The correct party in such cases is the human person doing business under that trade name.

Suggestion: If a business is not a SoS entity, it is a water bottle. The Sheriff can't execute on a judgment against a water bottle, because water bottles can't own property. A

water bottle is never the real party in interest. When the Sheriff evicts a tenant, s/he can't hand over the keys to a water bottle.

❖ Failing to dispose of a party or a claim

The rule is that your judgment must dispose of all claims as to all parties.

Example: CVM-201, the SE Complaint form, contains Checkbox 6:

Amount Of Damage (if known)	Amount Of Rent Past Due	Total Amount Due
\$	\$	\$

6. I demand to be put in possession of the premises and to recover the total amount listed above and daily rental until entry of judgment plus interest and reimbursement for court costs.

Date	Name Of Plaintiff/Attorney/Agent (type or print)	Signature Of Plaintiff/Attorney/Agent
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Because the request for past-due rent is incorporated into the request to recover possession, use of this complaint form will automatically create two separate claims which much be addressed in your judgment unless the plaintiff edits the form. If your judgment is silent as to the claim for money damages, a difficult legal question may arise in a later action as to whether your failure to award the requested monetary damages amounted to a denial of plaintiff's claim.

Similarly, a complaint that involves more than one clearly identified plaintiff and clearly identified defendant may create "downriver" questions about who it applies to. A complaint form that lists a person's name, followed by a "dba" second name needs to be clarified, as does a complaint listing a business name without identifying it as an LLC/corporation. Another example is a complaint that lists two defendants and a judgment that mentions only one, without some additional ruling by the court as to the other.

Basically, all the issues in this category concern problems related to discerning the legal effect of your judgment. It is important that a person who examines the paperwork can determine the identity of the parties and your precise decision as it pertains to each of them for each claim asserted in the complaint.

## Issues Which Imperil the Court's Ability to Reach a Fair and Just Result on the Merits

❖ Issues involving notice

Notice is a particularly significant issue in small claims court -- due mostly to the combined effect of SRLs and extremely short time frames -- and it comes up in a variety of contexts. While the law sometimes specifically requires a delay in the proceedings (e.g., minimum notice periods), it often falls to the magistrate to determine whether a continuance is necessary to ensure a fair and just result. Making that determination can be a complex analytical process.

Factors to consider:

Is one party surprised? For example, the law allows a defendant to file a counterclaim right up to the time the case is set for trial, but the plaintiff may still be surprised.

Would the surprised party actually benefit from additional time to prepare to respond and/or to consider additional action?

To what degree does a delay in the proceedings harm the other party?

Examples to think about:

- ❖ Before a SE action begins, the tenant hands the LL a completed Declaration and the LL in turn hands the T and the Court a Response alleging that (1) the action is based on permissible grounds, or (2) that the tenant has been deceptive the Declaration. The tenant asks for a continuance.
- ❖ A landlord has filed an action for SE based on breach of a lease condition (violation of the pet clause) but states in court that the pet issue has been resolved, but SE is still sought due to criminal activity. The tenant asks for a continuance.
- ❖ When a plaintiff arrives in court and discovers the defendant is represented by an attorney, the plaintiff asks for a continuance in order to retain an attorney as well.
- ❖ When a plaintiff learns that an LEO expected to attend court to testify about defendant-tenant's criminal behavior is unable to be there, the plaintiff asks for a continuance.

In considering how you might rule in these situations, be sure to consider the three factors above in arriving at your answer.

- ❖ Issues going to the competence of the parties (minors, persons who are mentally incompetent)  
Remember that a minor – no matter how young -- can be a party, but a GAL must be appointed.
- Issues involving only slightly more competent parties (i.e., “I left my evidence at home.”)  
Whether to grant a continuance is a discretionary decision, but judicial officials must be concerned about inconsistency in making such decisions. When a party claims that important evidence exists – but did not bring it to court – you must balance the goal of making the correct decision on the merits (from a god’s- eye view) against the value of enforcing the expectation that parties should be prepared when they come to court. For many magistrates, the decision is more nuanced than that. For example, the degree of inconvenience to the other party may be a factor, as may be the other party’s perception of fairness in the court’s enforcement of the rules – or, neither of these may be identified as relevant to this decision. There’s no single correct answer, of course, but magistrates should be guided by their own thoughtful articulation of the governing factors determined in advance. What is your own general policy, and what factors might cause you to vary from it in an individual case?