

# Magistrates, Clerks, & Small Claims

## The Clerk's Role in Assignment of Cases to Small Claims

### Relevant Statutes

#### **§ 7A-211. Small claim actions assignable to magistrates.**

*In the interest of speedy and convenient determination, the chief district judge may, in his discretion, by specific order or general rule, assign to any magistrate of his district any small claim action pending in his district if the defendant is a resident of the county in which the magistrate resides. If there is more than one defendant, at least one of them must be a bona fide resident of the county in which the magistrate resides.*

#### **§ 7A-213. Procedure for commencement of action; request for and notice of assignment.**

*The plaintiff files his complaint in a small claim action in the office of the clerk of superior court of the county wherein the defendant, or one of the defendants resides. The designation "Small Claim" on the face of the complaint is a request for assignment. If, pursuant to order or rule, the action is assigned to a magistrate, the clerk issues a magistrate summons substantially in the form prescribed in this Article as soon as practicable after the assignment is made. The issuance of a magistrate summons commences the action. After service of the magistrate summons on the defendant, the clerk gives written notice of the assignment to the plaintiff. The notice of assignment identifies the action, designates the magistrate to whom assignment is made, and specifies the time, date and place of trial. By any convenient means the clerk notifies the magistrate of the assignment and the setting.*

#### **§ 7A-215. Procedure upon nonassignment of small claim action.**

*Failure of the chief district judge to assign a claim within five days after filing of a complaint requesting its assignment constitutes nonassignment. The chief district judge may sooner order nonassignment. Upon nonassignment, the clerk immediately issues summons in the manner and form provided for commencement of civil actions generally, whereupon process is served, return made, and pleadings are required to be filed in the manner provided for civil actions generally. Upon issuing civil summons, the clerk gives written notice of nonassignment to the plaintiff. The plaintiff within five days after notice of nonassignment, and the defendant before or with the filing of his answer, may request a jury trial. Failure within the times so limited to request a jury trial constitutes a waiver of the right thereto. Upon the joining of issue, the clerk places the action upon the civil issue docket for trial in the district court division.*

**§ 7A-212. Judgment of magistrate in civil action improperly assigned or not assigned.**

*No judgment of the district court rendered by a magistrate in a civil action assigned to him by the chief district judge is void, voidable, or irregular for the reason that the action is not one properly assignable to the magistrate under this article. The sole remedy for improper assignment is appeal for trial de novo before a district judge in the manner provided in this article. No judgment rendered by a magistrate in a civil action is valid when the action was not assigned to him by the chief district judge.*

See also [Assignment to Small Claims Court: What Happens When Things Go Wrong](#), 8/12/2015 On The Civil Side Blog; [The Clerk of Court's Role in Small Claims Cases](#), 7/29/2015, [On the Civil Side Blog](#).

**Matters to Discuss With Your Small Claims Clerk**

When a complaint seeking more than \$10,000 (or the amount in your county if less) is filed, how will the clerk handle that and, in the event the case comes before you, how will you handle that?

Specifically, is the policy that the magistrate will off the plaintiff the opportunity to amend the amount sought to bring it within the permissible amount? If so, and the plaintiff agrees to an amendment, how should that be reflected in the paperwork? If so, and the plaintiff does not agree to the amendment, should the magistrate (1) direct the plaintiff to return to the clerk to complete the procedure set out in GS 7A-215, or (2) dismiss the case?

If a complaint/summons indicates that the defendant does not reside in the county, how will the clerk handle that and, in the event the case comes before you, how will you handle that?

**Dealing With Affidavits & Similar Matters**

**Matters to Discuss With Your Small Claims Clerk**

**G-250 SCRA Affidavit**

Does your clerk automatically provide plaintiffs with a blank SCRA affidavit? If a completed affidavit is not in the shuck, do you have extra forms to give plaintiffs who need to complete one? If so, do you simply add the completed form to the shuck, take a brief break/grant a continuance to allow the plaintiff to file the form with the clerk, or do something else?

**While we're talking about the SCRA**

When an SCRA affidavit indicates that a non-appearing defendant is a servicemember, the law requires that an attorney be appointed to communicate with the servicemember about the SCRA protections. What is the expected action for you to take upon receiving such an affidavit?

**CVM-208 CDC Compliance Affidavit (and Completed Declaration and LL notification thereof)**

Does the clerk automatically provide all plaintiffs in SE actions a copy of CVM-208? Does the plaintiff typically complete the affidavit immediately and file it with the clerk (seems unlikely), bring the completed form with them to court, or do something else?

Does your clerk allow the LL and/or T to file a completed declaration?

When LLs notify the clerk that they have received a completed declaration, how is that notification recorded so that you will be aware of it?

### GAL Appointment for Minor Parties

When your clerk learns that one of the parties is a minor, what action, if any, do they take to appoint a GAL to represent the minor in the lawsuit?

If a minor without a GAL appears in your courtroom, what should happen? Do you send the party to the clerk's office for a GAL to be appointed, or do you go ahead and make the appointment? If you make the appointment, what form do you use? (Note: many magistrates modify [AOC-CV-318](#) for this purpose.)

## The Clerk's Role in Motions Filed in Small Claims Court

### **§ 7A-221. Objections to venue and jurisdiction over person.**

*By motion prior to filing answer, or in the answer, the defendant may object that the venue is improper, or move for change of venue, or object to the jurisdiction of the court over his person. These motions or objections are heard on notice by the chief district judge or a district judge designated by order or rule of the chief district judge. Assignment to the magistrate is suspended pending determination of the objection, and the clerk gives notice of the suspension by any convenient means to the magistrate to whom the action has been assigned. All these objections are waived if not made prior to the date set for trial. If venue is determined to be improper, or is ordered changed, the action is transferred to the district court of the new venue, and is not thereafter assigned to a magistrate, but proceeds as in the case of civil actions generally.*

**Comment:** This statute assumes that the clerk will examine a motion upon filing to determine whether the motion is based on (1) venue and/or (2) personal jurisdiction and, if so and if the motion has been filed in a timely manner, notify the magistrate that assignment has been suspended. This assumption is simply incorrect in most counties.

### **Matters to Discuss With Your Small Claims Clerk**

How should we communicate with each other about the fact that a motion challenging venue or personal jurisdiction has been filed, necessitating suspension of assignment and a hearing on the motion by a district court judge? Who is responsible for communicating with the parties about this change of plans?

**§ 7A-223.** Practice and procedure in small claim actions for summary ejectment.

*. . . If a small claim action demanding summary ejectment is assigned to a magistrate, the practice and procedure prescribed for commencement, form and service of process, assignment, pleadings, and trial in small claim actions generally are observed, except that if the defendant by written answer denies the title of the plaintiff, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the clerk withdraws assignment of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned.*

**Comment:** This statute is included for the sake of thoroughness, but it very seldom arises in small claims court. If the issue is raised by the defendant for the first time at trial, the defendant's failure to comply with the statutory requirements that defendant file a written answer suggests that this procedure is not triggered. Nevertheless, in my opinion, the issue of title is not one a magistrate has jurisdiction to determine. This potential problem is often resolved by the magistrate's initial jurisdictional inquiry into whether the parties are involved in a "simple landlord-tenant relationship." To the degree that a credible argument exists that (1) the plaintiff had no possessory interest in the property to transfer, or (2) that the plaintiff's interest in the property is something other than a leasehold interest (e.g., amounting to ownership or some sort of equitable interest), the magistrate may conclude that the court is without subject matter jurisdiction to determine the action for summary ejectment.

**§ 7A-228.** New trial before magistrate; . . .

- (a) The chief district court judge may authorize magistrates to hear motions to set aside an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a magistrate. The exercise of the authority of the chief district court judge in allowing magistrates to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or order entered by a magistrate and, if granted, to order a new trial before a magistrate....

**Comment:** A Rule 60(b) motion to set aside a judgment is, of course, a post-judgment motion, and the general rule is that Rule 60(b) motions are heard by district court judges, rather than magistrates. This is true even in small claims cases, regardless of whether the aggrieved party has given notice of appeal. This statute establishes a limited exception to that general rule, allowing the Chief District Court Judge to authorize magistrates (or sometimes one or more particular magistrates) to hear motions based on Rule 60(b)(1). Note that the Rule lists six grounds for this motion, and even authorized magistrates cannot hear motions based on Rule 60(b)(2) – (6). An authorized magistrate can hear this motion only if the alleged grounds are "mistake, inadvertence, surprise, or excusable neglect." Also note that numerous cases have emphasized that the "mistake" referred to in the statute does not mean a legal error made by a judicial official, but rather a mistake unrelated to the law. For example, a party may fail to

appear for trial because they went to the wrong courtroom or misread the summons as to the date or time for trial.

### **Matters to Discuss With Your Small Claims Clerk**

Has your CDCJ authorized you to hear motions made pursuant to Rule 60(b)(1)?

When a motion to set aside a small claims judgment is filed with the clerk, will the clerk verify the grounds for the motion prior to sending it to you for hearing?

If you determine the grounds for the motion to be other than those contained in Rule 60(b)(1), what is the procedure for next steps?

If multiple magistrates are so authorized, what is the policy about which magistrate should conduct the hearing? Does it matter which magistrate conducted the small claims trial?

If you are responsible for hearing a Rule 60(b)(1) motion, how will the parties be notified of the hearing details?

Does your clerk have any preference about the manner in which you record your decision?

If you rule in favor of the motion and set aside the small claims judgment, what is the policy about which magistrate is assigned the case for the second time?

## Conducting Court: Preliminary Matters

### **Matters to Discuss With Your Small Claims Clerk**

Is it possible for you to obtain cases prior to the day they're set for trial?

Does your clerk screen cases to determine service in advance of trial? How is the paperwork handled so that you are able to call and hear un-served cases in the event the defendant appears?

What is the procedure for notifying parties that a case has been continued?

## Judgments & Appeal

### **Matters to Discuss With Your Small Claims Clerk**

Does your clerk have a preferred procedure for modifying the judgment form in cases involving a counterclaim?

Does your clerk want you to flag amendments related to (1) names of parties, (2) substitution of parties, (3) amount sought by plaintiff, (4) dismissal or addition of claims for relief, and (5) any other amendments made in open court? What is preferred method of flagging?

When cases are continued due to unplanned closings due to bad weather or other reasons, who is responsible for notifying the parties and how is that accomplished?

In completing the judgment form in favor of the landlord in a summary ejectment action, what information should be included to assist the clerk in the event of appeal and a request that the eviction be stayed pending appeal? (Relevant statute is [GS 42-34.](#))

