

**SMALL CLAIMS COURT**

\_\_\_\_\_ -CVM- \_\_\_\_\_

**MECKLENBURG COUNTY**

**SMALL CLAIMS CASE/MOTIONS TRANSMITTAL FORM**

The undersigned magistrate/clerk has reviewed Rule 10.16 of the 26<sup>th</sup> Judicial District Court Division General Civil Rules, the text of which appears on the back of this transmittal form, and has accordingly determined that:

\_\_\_\_\_ (check if applicable) This case shall be returned to the Clerk to be treated as “nonassigned” pursuant to 10.16(b) & NCGS sec. 7A-215 when the Complaint on its face indicates small claims lack subject matter jurisdiction; the clerk shall issue a summons for commencement of civil actions generally in district court and serve written notice of nonassignment to plaintiff;

\_\_\_\_\_ (check if applicable) This case shall be returned to the Clerk to be treated as “nonassigned” pursuant to 10.16(g) because a party has placed title to the property in question in a summary ejectment action; the clerk shall withdraw assignment of the action to the magistrate and place the action on the civil issue docket of District Court;

\_\_\_\_\_ (check if applicable) The undersigned states that this motion has been transmitted to civil district court pursuant to (check applicable local rule), and the undersigned states that he/she did not notice the parties as to the case being placed on the district Court docket as notice is to be sent directly by the District Court:

- a. 10.16(d) where the question of subject matter jurisdiction cannot be resolved by the face of the pleading;
- b. 10.16(e) AND defendant filed motion raising objection to venue, requesting change of venue, or objected to personal jurisdiction PRIOR TO the date set for trial;
- c. 10.16(f) where a party filed a Rule 60(b) that raises grounds OTHER THAN mistake, inadvertence, surprise or excusable neglect;

\_\_\_\_\_ Other: (explain) \_\_\_\_\_

This the \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Magistrate

## **10.16 Motions Referred to Civil District Court by the Magistrate:**

- (a) Small claims court has jurisdiction over complaints and counterclaims where the monetary relief sought does not exceed the small claims threshold of \$10,000 or a lesser amount if that threshold has been lowered by the Chief District Court Judge's Order of Delegated Authority to the Magistrates; where one or more defendants live in Mecklenburg County; and in summary ejectment actions, where the plaintiff alleges that the parties have a landlord-tenant relationship.
- (b) If a plaintiff files a small claims action or defendant files a counterclaim where the pleadings on their face demonstrate that the complaint or counterclaim do not fall within the subject matter jurisdiction of small claims court, then the magistrate shall (1) dismiss the complaint or counterclaim without prejudice or (2) in the case of a complaint that falls outside the subject matter jurisdiction of small claims court, return the complaint to the Clerk of Superior Court which may treat the case as "nonassigned" under N.C.G.S. section 7A-215, issue a summons in the manner and form provided for commencement of civil actions generally in district court and serve written notice of nonassignment to plaintiff.
- (c) Motions to dismiss pertaining to the matters described in a & b above shall be directed to the magistrate for resolution and not placed on a civil district court docket.
- (d) When a party files a motion to dismiss for lack of subject matter jurisdiction which cannot be resolved by viewing the face of the pleadings, then the assignment of the case to the magistrate shall be suspended and the clerk shall schedule the motion to dismiss to be heard by a district court judge presiding over the next Friday 9:00 AM motions calendar in civil district courtroom 6330.
- (e) If a defendant raises an objection to venue, moves for a change of venue, or objects to personal jurisdiction on the date of the scheduled trial in small claims court, then such objections are deemed to be waived. However, if a defendant files a motion raising an objection to venue, requesting a change of venue, or objecting to personal jurisdiction PRIOR TO the date set for trial, then assignment of the case to the magistrate shall be "suspended" and the clerk shall schedule the motion to be heard by a district court judge presiding over the next Friday 9:00 AM motions calendar in civil district courtroom 6330.
- (f) Rule 60 (b)(1) Motions to Set Aside a Magistrate's Judgment alleging surprise, mistake, inadvertence or excusable neglect may be heard by the magistrate; a Rule 60 (b) Motion to set aside on any other grounds shall be scheduled on the next Friday 9:00 AM motions calendar in civil district courtroom 6330 to be heard by a district court judge.
- (g) Under no circumstance should a magistrate "transfer" an action initiated in small claims to civil district court EXCEPT THAT pursuant to 7A-223(a), if a defendant files an answer in a summary ejectment action denying plaintiff's title to the leasehold or property in question, then the magistrate should return the case to the clerk who shall "withdraw assignment from the magistrate" and place the action on the docket of civil district court.
- (h) In summary ejectment actions, if the magistrate finds that plaintiff has failed to prove a landlord-tenant relationship exists between the parties after hearing, then the magistrate shall dismiss the case for lack of subject matter jurisdiction AND NOT return the complaint to the clerk, as district court would similarly lack subject matter jurisdiction over the matter even if a proper district court summons was issued and the case was redirected by the clerk to civil district court. If a party disagrees with the magistrate's dismissal, that party may appeal the magistrate's ruling to civil district court.
- (i) In the event that the Chief District Court Judge enters an Administrative Order that conflicts with any of these provisions of Rule 10.16, then the Administrative Order will govern.