

Assignment to Small Claims Court: What Happens When Things Go Wrong?

[My last post](#) discussed the clerk of court's role in determining whether a case is eligible for small claims court under the terms of the chief district court judge's order of assignment (hereinafter, *OA*). This post addresses what happens when things go wrong: What options do court officials have when a case turns up on the small claims calendar that does not meet the requirements for assignment to small claims court?

Improperly Assigned or Non-Assigned?

The law differentiates between two types of errors leading to this situation. The first, which seldom occurs, arises when the chief district court judge makes an error in the *OA*, directing assignment of cases which are actually not eligible to be heard in small claims. Imagine, for example, that the *OA* directs assignment of cases seeking money damages in which the amount in controversy does not exceed \$12,000. If the clerk calendars an \$11,000 case for small claims, that case was assigned by the chief district court judge, but the assignment was improper. In such a case, [GS 7A-212](#) provides that the magistrate's judgment is not subject to attack as void, voidable, or irregular—the "sole remedy for *improper assignment* is appeal for trial de novo."

The second type of error is far more common, and the consequences more serious. In this circumstance, a case is placed on the small claims calendar despite the fact that it does not fall within the scope of the *OA*. In the example above, imagine that the *OA* set a \$10,000 limit, but the clerk ignored the order and calendared the \$11,000 case for small claims. In this situation, the clerk's action is a nullity, the case *has not been assigned* to small claims court, and any judgment entered by the magistrate is invalid. [GS 7A-212](#).

What should court officials do? When a non-assigned case turns up on the small claims calendar, a number of considerations come into play. Clearly, it is improper for the magistrate to simply ignore the issue and proceed to enter an invalid judgment. Should the magistrate dismiss based on lack of subject matter jurisdiction in this situation, and if so, should the dismissal be with or without prejudice? Would it be better for the magistrate to simply return the case to the clerk? Can the magistrate permit amendment of the complaint to correct the difficulty, thereby rendering the case eligible for assignment? Is there some way for the magistrate to transfer the case directly to the proper court?

"[E]very court necessarily has inherent judicial power to inquire into, hear and determine the questions of its own jurisdiction." [Burgess v. Gibbs](#), 262 N.C. 462, 465 (1964). A magistrate always has legal authority to dismiss a case in which subject matter jurisdiction is lacking, even if neither party raises the issue. Because AOC G-108, the General Order Form used to record dismissals, contains separate checkboxes labeled "with prejudice" and "without prejudice," magistrates

sometimes wonder which box they should check. My recommendation is that the magistrate check neither box, but instead indicate on the judgment that the reason for dismissal is lack of subject matter jurisdiction.

While dismissal is always an available option, it may not be the best choice when the face of the complaint clearly discloses that a case is ineligible for assignment. The law anticipates that the clerk who takes such a complaint will refuse the plaintiff's request that the case be heard in small claims court. See [GS 7A-215](#), titled *Procedure upon Nonassignment of Small Claims Action*. Had the clerk complied with this statute, the nonassigned case would eventually have been rerouted for trial in district court. When a case is improperly sent to small claims court instead, it adds insult to injury to then dismiss the case, subjecting the plaintiff to the inconvenience and cost involved in refiling the case in the proper court. In this instance, it may be preferable for the magistrate to simply return the nonassigned case to the clerk who should then act as much as possible in accordance with the statutory procedure.

When a case is not eligible for small claims because no defendant resides within the county, the magistrate's options are limited to dismissal or returning the case to the clerk. When the problem arises because the amount sought by plaintiff exceeds the maximum amount established by the OA, however, most magistrates make use of a third option: they invite the plaintiff to amend the complaint to reduce the amount sought to one not exceeding the permissible amount specified in the OA. If the plaintiff agrees, the magistrate proceeds to hear the case. This practical solution is troublesome from a legal point of view because of the timing. The statutory requirement related to amount in controversy does not restrict a magistrate's authority to enter judgment for an excessive amount, but rather restricts the chief district court judge's authority to assign such a case to begin with. Conceptually, amending the complaint when the case comes on for trial is effective only if the amendment somehow retroactively causes the case to have been "assigned" to small claims. This practice is at best an uneasy fit with the GS Ch. 7A procedures for assignment, and the alternatives of dismissing the case or returning it to the clerk are unattractive solutions because of their inefficiency. In this situation in particular, an ounce of prevention may be worth a pound of cure; thus, the best practice is for clerks to prioritize enforcing the amount in controversy in requirements in deciding whether to calendar a case for small claims.

In some counties it has long been common practice for a small claims magistrate confronted with a nonassigned case to simply transfer the case directly to district court. The appeal of such a simple, straightforward method of getting a case to the appropriate court is easy to understand, but there is no statutory authority for this procedure. Returning the case to the clerk instead is, as described above, an authorized means of accomplishing the objective while ensuring that the statutory requirements (such as issuance of civil summons) are satisfied.

Thus far our discussion has focused on cases in which the reason for nonassignment is readily apparent from the complaint and the appropriate forum for the case is easily identified. In this context as in so many others, summary ejection cases require special consideration. That will be

On the Civil Side

A UNC School of Government Blog

<https://civil.sog.unc.edu>

the topic of my next post.