

## Small Claims Procedure for Magistrates: Judgments, Orders, and the Difference between Them

When a magistrate has heard evidence in a case and makes a decision based on that evidence, the formal document reflecting that decision is a *judgment* of the court. Form judgments for each kind of small claims case are provided by the AOC (designated as CVM forms), and they provide a valuable guide to the finding and conclusions required for a proper judgment. While the AOC forms are convenient, the law does not require their use, and some counties routinely utilize different forms. The AOC forms do reflect thoughtful decisions about what should be included in a judgment, however, and a small claims magistrate is advised to investigate further before deciding to routinely deviate from or ignore some portion of the judgment form.

No form judgment will be a perfect fit for all small claims cases, and magistrates should remember that the ultimate goal is for the judgment to accurately set forth the court's actual decision. The judgment form is a tool that should be modified as needed to that end. Small claims judgments may be vitally important in determining the rights of parties in subsequent lawsuits, but this importance depends in large part on whether it is possible to ascertain what was decided in the small claims action. For example, if the magistrate fills out a judgment form in a negligence action by merely checking the block indicating that "plaintiff has failed to prove the case by the greater weight of the evidence," it is unclear whether the magistrate found (1) that the defendant was not negligent or (2) that plaintiff was also negligent and thus barred from recovering damages. If a magistrate provides this information in the section of the form labeled "Other," this determination of the negligence of the parties would be conclusive in a future lawsuit between them. Thus a magistrate should consider whether the circumstances in a particular case warrant additional specificity in identifying the reasons for the magistrate's decision.

A magistrate enters judgment by completing and signing the judgment form and filing it with the clerk. [G.S. 7A-224](#). [G.S. 1A-1, Rule 58](#). *Entry of judgment* is one of the law's Momentous Moments—like the effect of a deed, a divorce decree, or an honorable discharge, the rights of an individual are significantly different the moment after judgment is entered than the moment before. Because of this, a fundamental legal preference is expressed in the phrase "finality of judgments." A judgment can be modified or set aside, but not without observation of formal legal requirements and never without good reason.

One of many confusing facts in the world of small claims law is that when a plaintiff fails to prove the case by the greater weight of the evidence, the law (and the AOC forms) uses the term *dismissal* to describe the outcome. [G.S. 7A-222\(a\)](#). In the larger legal world, to say a case is *dismissed* means that it has come to an end without the court hearing the evidence and deciding it on the merits. In Small Claims Land, that's also true, but the word is used more broadly to encompass a decision on the merits against the plaintiff.

While the terminology overlaps, it's important to distinguish the two very different outcomes, one of which is a judgment on the merits and the other of which is . . .not. Instead, the other (also, confusingly, termed a *dismissal*) brings a case to an end without a judgment being entered. The AOC form for recording the latter event—and actually other significant events occurring during the lifetime of a case—is [G-108](#), the generic *Order* form. G-108 may be used to record a dismissal in any of the following events:

1. The plaintiff, at some point prior to completing the presentation of evidence, has decided not to go forward with the case at this time (a *voluntary dismissal*).
2. The plaintiff has finished presenting evidence (and is thus no longer entitled to dismiss the case as a matter of law) but is given permission by the court to dismiss the case (also a *voluntary dismissal*).
3. The plaintiff failed to appear for trial (an *involuntary dismissal*).
4. Neither party appeared for trial (an *involuntary dismissal*).

Dismissals, both voluntary and involuntary, are governed by [G.S. 1A-1, Rule 41](#), and cases involving Rule 41 are some of the most confusing in civil procedure. There are a number of reasons for this, most of them involving the impact of a dismissal today on the plaintiff's right to re-file the same case at some point in the future. A voluntary dismissal can be advantageous to a plaintiff by extending the statute of limitations in his case, but an unwary plaintiff may run afoul of the "two-dismissal rule" and forever lose the right to obtain a judgment on the merits of the case. See [my colleague Ann Anderson's post on this topic.](#)

G-108, the AOC Order form, directly presents this question of whether a plaintiff will be allowed to re-file the dismissed case in the form of two checkboxes at the top of the form. If the box labeled *with prejudice* is checked, the plaintiff is barred from later filing an identical action. Checking the box labeled *without prejudice*, on the other hand, preserves the plaintiff's right to sue the defendant at a later point for the same alleged wrong.

Generally, a voluntary dismissal is without prejudice. A magistrate should check the box indicating with prejudice only if the plaintiff so indicates. An example of an appropriate fact situation would be if the plaintiff informs the court that the plaintiff wishes to take a voluntary dismissal because the defendant has paid all that is owed.

Generally, an involuntary dismissal is *with prejudice*. If the plaintiff fails to appear and the defendant appears and requests a dismissal, the law provides that the dismissal is with prejudice. When neither party appears, the same result generally applies, although a magistrate may dismiss without prejudice if justice requires.

In some cases it may be best for the magistrate to check neither box and instead explain the dismissal. A common example arises when a plaintiff files a case in small claims which is not eligible for hearing in that court. A dismissal with prejudice is subject to being understood as a

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ruling that the plaintiff may not refile the action in any court. A dismissal without prejudice is sometimes misunderstood by a plaintiff unfamiliar with the law to mean the case can be refiled in small claims court. In such a case the magistrate should simply check “involuntary dismissal” and write on the order form that the magistrate is without jurisdiction to hear the case in small claims court.