

The Clerk of Court's Role in Small Claims Cases

When a litigant presents a complaint and asks that the case be heard in small claims court, a clerk has different responsibilities than when a plaintiff wishes to file any other sort of civil case. Those responsibilities are critically important, and failure to perform them correctly can lead to additional time and effort on the part of court officials, added expense and delay for litigants, and even judgments ultimately declared void. The source of these additional duties are several little-known statutory provisions in G.S. Ch. 7A, Art. 19, governing small claims procedure.

Assignment. A magistrate has no authority to hear a case in small claims court until and unless the action is *assigned* by the chief district court judge. A chief district court judge may assign a case to small claims only if two conditions exist: first, the case must fall within the definition of a *small claims action* set out in GS 7A-210. Second, the defendant must reside in the county. (If there are two or more defendants, at least one must reside in the county.) GS 7A-211.

Definition of small claims action. GS 7A-210 defines a small claims case as one satisfying three requirements:

- (1) The amount in controversy does not exceed \$10,000.
- (2) The remedy sought by the plaintiff is money damages, recovery of personal property, and/or summary ejectment. (Actions to enforce motor vehicle liens are governed by GS 7A-211.1, and are not addressed in this post.)
- (3) The plaintiff has requested assignment to small claims court. Use of an AOC-approved complaint form constitutes a request for assignment.

No assignment, no jurisdiction. If a case does not fall within the definition of a small claims action, or if no defendant resides within the county, the chief district court judge has no authority to assign a case to small claims. A magistrate's judgment in a case which has not been assigned by the chief district court judge is void. G.S. 7A-212.

An order of assignment. Chief district court judges obviously don't ponder whether to assign each of the approximately 200,000 small claims cases filed in North Carolina each year, nor are they required to do so. G.S. 7A-211 states that assignment may be made "by specific order or general rule." So far as I know, the clerk's office in every county has on file an *order of assignment* in which the chief district court judge directs the clerk to calendar for small claims those cases which conform to requirements set out in the order. Typically, an assignment order closely tracks the statutory requirements set out above.

When a plaintiff files a complaint and asks that the case be assigned to small claims court, G.S. 7A-213 says what happens next: "if, pursuant to order or rule, the action is assigned to a

magistrate, the clerk issues a magistrate summons . . . as soon as practicable after the assignment is made.” Stated another way, after accepting the complaint, the clerk must determine whether the chief judge’s order of assignment applies to this particular case. If so, the clerk is to issue a magistrate summons.

How does the clerk make this determination? The clerk must consider the contents of the complaint in light of the requirements of the order of assignment. There are three areas of inquiry.

First, does at least one defendant reside in the county? If not, the chief district court judge has no authority to assign that case to small claims court. GS 7A-211. If the clerk places such a case on the small claims calendar, the legal status of that case is no different than if the clerk scheduled a capital murder case for small claims—the small claims magistrate has absolutely no authority to proceed.

Second, is the amount in controversy indicated on the face of the complaint within the limit specified in the chief judge’s order? G.S. 7A-210 sets a maximum limit on the chief judge’s discretion in assigning cases, so no case may be assigned to small claims if the amount in controversy exceeds \$10,000. The chief judge is perfectly free to limit assignment to cases involving a lesser amount, however, and in several counties chief judges have done exactly that. Because the clerk’s role is to implement the assignment order, the inquiry is whether the assignment order in effect in a particular county directs that a particular case be calendared in small claims court. If a litigant files a complaint seeking \$8,000 and the chief judge’s order limits small claims assignment to cases with an amount in controversy not exceeding \$5,000, the \$8,000 case has not been assigned pursuant to the order, even if the clerk mistakenly schedules the case to be heard in small claims court.

Third, is the plaintiff seeking one of the remedies approved by the statute as falling within the definition of a small claims case? This is seldom an issue for clerks at the complaint-filing stage, because most litigants use AOC form complaints indicating that the plaintiff is seeking money damages, summary ejectment, recovery of personal property, or some combination thereof. Sometimes it is only when the magistrate begins to hear the evidence in a case does it become clear that it does not meet the definition of a small claims action after all. The procedure for responding to the sudden discovery that the court lacks jurisdiction to proceed is often problematic, and one that I will write about next time.

A fundamental tenet is that clerks of court should not read pleadings and advise litigants about their contents. Similarly, all new clerks are told that clerks should not function as gatekeepers to the justice system, picking and choosing what cases may be filed and which ones will be turned away. Many times I have heard a clerk say that a case should be calendared for small claims without further inquiry upon plaintiff’s request. Because of the unique procedural rules governing small claims actions, however, those familiar, well-intentioned practices are problematic. The statutory scheme relies on clerks to properly implement the chief judge’s order of assignment by checking

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the complaint to determine whether the case is one “assigned” to small claims court. This is not to say that a clerk should offer the litigant legal advice, nor that a clerk should refuse to allow a complaint to be filed. But as GS 7A-213 makes clear, accepting a complaint for filing is only the first step. The second step, determining whether the case is assigned to small claims, requires additional action.