

The Mysterious World of Small Claims Procedure

Every so often I get telephone calls from attorneys, fresh from a rare appearance in small claims court, calling to offer some helpful observations about the need for more and better training of small claims magistrates. I suspect that chief district court judges and clerks of superior court receive similar calls. While magistrates, like the rest of us, sometimes make mistakes, I've learned that it is often the attorney, rather than the magistrate, who is in error, for reasons that are entirely understandable. After all, attorneys share that fundamental rite of passage of having suffered through two agonizing (at least for some of us) semesters of law school mastering various aspects of the Rules of Civil Procedure. And Rule #1 (literally) assures us that "These rules shall govern the procedure in superior and district courts of the State of North Carolina in all actions and proceedings of a civil nature except when a differing procedure is prescribed by statute." [GS 1A-1, Rule 1](#). So what's up with small claims?

The answer lurks in that last portion of Rule 1 referring to "a differing procedure . . . prescribed by statute." That "differing procedure" is set out, in what must be admitted is a not-exactly-intuitive sequence, in [GS Ch. 7A, Art. 19, Small Claims Actions in District Court](#). Much like the situation related to juvenile law [described recently in this blog](#) by my colleague, Sara DePasquale, the North Carolina Rules of Civil Procedure apply to small claims actions unless they don't, which, as it turns out, is a good deal of the time. The purpose of this post is to identify and briefly discuss the most significant areas in which small claims procedure departs from the more familiar rules set out in GS 1A-1.

Service of process. Unless the action involves a motor vehicle lien, service by publication is not available in small claims court. [GS 7A-217](#); [7A-211.1](#).

No answer required. A defendant's failure to file an answer in a small claims action constitutes a general denial. [GS 7A-218](#).

Venue is jurisdictional. A chief district court judge has authority to assign a case to small claims court only if at least one defendant resides in the county. [GS 7A-211](#). If this requirement is not satisfied, the action has not been "assigned" and any judgment entered by a small claims magistrate is not a valid judgment. [GS 7A-212](#). A different rule applies in actions to enforce motor vehicle liens. [GS 7A-211.1](#).

Limits on available relief. [GS 7A-210\(2\)](#) defines "small claims actions" in terms of the relief sought by the plaintiff. The statute permits actions to recover money damages (subject to the \$10,000 amount in controversy limit), actions to recover possession of personal property, and summary ejectment actions to be assigned to small claims court. Conspicuously absent from the list are actions seeking some sort of coercive order or injunctive relief.

No Rule 12(b)(6) motions. Motions to dismiss for failure to state a claim pursuant to GS 1A-1, Rule 12(b)(6) “shall not be used.” If a complaint contains information insufficient to “allow a person of common understanding to know what is meant,” the clerk, chief district court judge, or magistrate hearing the case has authority to order the plaintiff to amend the complaint to provide more details. [GS 7A-216.](#)

Limit on length of continuances. In an action for summary ejectment and/or past due rent, a continuance for good cause is limited to five days or the next session of small claims court, whichever is longer, unless all parties agree to a longer period. [GS 7A-223\(b\).](#)

No compulsory counterclaims. Failure to file a counterclaim in small claims court does not bar the defendant from asserting the claim in a separate action. [GS 7A-219.](#)

No default judgments. In every action, regardless of whether defendant files an answer or is present at trial, the plaintiff must prove the essential elements of the case by the greater weight of the evidence. [GS 7A-218](#); [7A-222](#). The sole exception to this requirement appears in [GS 42-30](#), which authorizes a magistrate to grant judgment on the pleadings in favor of the plaintiff in an action for summary ejectment provided certain requirements are met.

Time periods are abbreviated in small claims court:

- The trial date is set “as soon as practicable” after a case is assigned to small claims court, [GS 7A-213](#), within 30 days in most cases and within seven days in summary ejectment actions. [GS 7A-214](#); [42-28](#).
- The defendant must be served at least five days prior to trial in most actions, [GS 7A-214](#), and at least two days prior to trial in actions for summary ejectment. [GS 42-29](#).
- The magistrate may delay entering judgment for up to ten days in most actions, [GS 7A-222\(a\)](#); in actions for summary ejectment the magistrate is required to enter judgment on the day of trial unless (1) the case is complex, in which event judgment may be delayed for up to five days, or (2) the parties agree to a delay. [GS 7A-222\(b\)](#).
- Notice of appeal must be given within ten days of judgment, and costs of appeal must be paid within 20 days (10 days if the action is one for summary ejectment). [GS 7A-228\(b\)](#).

Appeal from a small claims judgment is to district court for trial de novo. [GS 7A-228](#); [7A-229](#).

It’s easy to understand why an attorney with a general civil practice might assume that the GS 1A-1 sets out the rules of the game in small claims court, without ever thinking to consult GS Ch. 7A in search of other rules. In fact, as we’ve seen, there are numerous points of divergence. You may have also noticed that even within the specialized world of small claims procedure actions for summary ejectment occupy an even smaller procedural world of their own. I’ll be talking about that world the next time I write.