

FEATURE: A TALE OF TWO COURTS -- CIVIL PROCEDURE IN MAGISTRATE'S COURT AND THE COURT OF COMMON PLEAS

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Text

[*32] As a result of the increase in magistrate's courts jurisdiction to \$ 5,000 on January 1, 1996, many lawyers will be practicing in magistrate's court for the first time. These practitioners, who are accustomed to litigation in the common pleas court, will find themselves procedural strangers in a strange land.

From the filing of civil actions to appeals, dramatic differences exist in statutes and rules governing the two courts. The Rules of Civil Procedure apply insofar as practicable to the extent they are not inconsistent with the statutes and rules governing those courts. S.C.R.Civ.P. 81. Therefore, the peculiar rules of magistrate's court apply instead of the Rules of Civil Procedure to cases brought in magistrate's court.

FILING

In magistrate's court, a civil action may be filed in the appropriate magistrate's court having territorial jurisdiction in the county in which at least one defendant resides, except that civil actions against corporations may be filed in any county where the corporation has or usually keeps an office or agent for the transaction of its usual and customary business. S.C.R. Mag. Ct. 4.

Additionally, the state Supreme Court interpreted the constitutional predecessor of S.C. Const., Art. 5, § 26, to confine jurisdiction to the county for which the magistrate is appointed. [*Dill v. Durham*, 56 S.C. 423, 35 S.E. 3 \(1900\)](#).

These two provisions together present substantial filing problems for the lawyer who wishes to sue individuals from other counties or **[*33]** states or corporations that have no property, office or agent in the lawyer's county.

Aside from the option of filing in the appropriate county, the lawyer can file the case in the common pleas court and then move to have the case remanded to magistrate's court.

Peculiarities also exist in the filing of claim and delivery actions, which are actions to recover personal property. These actions should be filed in the county where the property is located. S.C. Court Administration, *S.C. Bench Book for Magistrates and Municipal Judges, II*, at 71.

Finally, certain types of actions cannot be filed in magistrate's court. A magistrate may not hear actions in which the title to property comes in question. [S.C. Code Ann. § 22-3-20 \(2\)](#) (Law. Co-op. 1989). However, a proceeding to eject a tenant who claims title in himself is not an action involving the title to land but a summary proceeding, and it may be filed in magistrate's court. [State ex rel. O'Neale v. Fickling, 10 S.C. 301 \(1878\)](#).

Also, a magistrate does not have jurisdiction in a civil action to which the state is a party, except an action for penalty not exceeding \$ 100. [S.C. Code Ann. § 22-3-20\(1\)](#) (Law Co-op. 1989). Presumably, this section would also apply to political subdivisions of the state, such as county and municipal governments. Reinforcement for this section comes from the S.C. Tort Claims Act, which provides that jurisdiction for actions brought under that act lies only with the Circuit Court. [S.C. Code Ann. § 15-78-100\(b\)](#). (Supp. 1996).

Lawyers should file actions in the appropriate county because the mere failure of the defendant to appear shall not be deemed a waiver of any objection the defendant has to the jurisdiction of the magistrate. S.C. Code Ann. § 22-3-210. (Law. Co-op. 1989).

[*34] FORM OF PLEADINGS

Unlike the formal pleading of circuit court, pleading in magistrate's court is simple.

The complaint is "a short and plain written statement showing what the plaintiff claims and why he claims it." S.C.R. Mag. Ct. 5. The plaintiff may even personally appear and make an oral statement as long as it is reduced to writing with the assistance of court personnel if the court determines such assistance is required. Plaintiffs may combine as many claims as they have against a defendant in one case. Plaintiffs may also sue more than one defendant in one case if their claim involves all of the defendants. *Id.*

The answer follows identical rules concerning its content and its form. The defendant may deny in whole or in part any of the plaintiff's allegations and allege any new matter constituting a defense. S.C.R. Mag. Ct. 7.

Similar rules as to content and form apply to counterclaims. The defendant may file a counterclaim growing out of the same transaction or occurrence as the plaintiff's claim. S.C. R. Mag. Ct. 8(a).

When the counterclaim exceeds \$ 5,000, the initial claim and counter-claim must be transferred to the docket of the common pleas court for that judicial circuit. [S.C. Code Ann. § 22-3-30](#) (Law. Co-op. 1989). However, the defendant may waive the excess or the counterclaim over the jurisdictional amount to bring it within the jurisdiction of magistrate's court. An action may not later be maintained in a separate action to recover the remainder of the claim if the defendant waives the excess. S.C.R. Mag. Ct. 8(c).

An answer, similar to the reply in circuit court, should be filed to the counterclaim. *S.C. Bench Book for Magistrates and Municipal Judges, II*, at 18.

SERVICE OF PLEADINGS

As in circuit court, filing of the summons and complaint precedes service in magistrate's court. S.C.R. Mag. Ct. 6 (a). Service may be by certified mail, but this manner of service doubles the time for answering S.C.R. Mag. Ct. 6(b). Service on absent defendants and service by publication are subject to the same procedures as circuit court. S.C. Code Ann. § 22-3-130 and § 22-3-140 (Law. Co-op. 1989).

The answer must be filed with the magistrate and, in turn, the magistrate must notify the plaintiff of the answer and provide a copy to the plaintiff. S.C.R. Mag. Ct. 7. Once the time for answering has elapsed, if the defendant has not filed an answer, "the court should sign an order of default and notify the plaintiff." *S.C. Bench Book for Magistrates and Municipal Judges, II*, at 15.

This procedure creates problems for lawyers who grant each other extensions to answer without notifying the court. If the court is unaware of the extension, the court could inadvertently enter an order of default. Given the informality

of pleading in magistrate's court, the preferable procedure would be to file a simple answer with the court within the required time. Following this practice will prevent the possible entry of unnecessary default orders.

In the case of default, the magistrate in contract actions may give judgment without a hearing if the plaintiff has attached an itemization of account to the summons and complaint or if the claim is liquidated. S.C. Code Ann. § 22-3-270 (Law. Co-op. 1989). In other types of actions, a default hearing should be held. Default also results if either side fails to appear at trial after answering.

Of course, peculiar statutory rules exist for service of claim and delivery and distress papers. For claim and delivery, see [S.C. Code Ann. §§ 22-3-1390](#), -1400, -1410 and -1420 (Law. Co-op. 1989). For distress, see [S.C. Code Ann. §§ 27-39-210](#) and -240 (Law. Co-op.) 1991).

PRETRIAL MATTERS

Perhaps the difference between magistrate's court and circuit court is the greatest in pretrial procedures. While magistrates can encourage exchange of information before trial, the court is prohibited from requiring such exchanges. S.C.R. Mag. Ct. 13. This rule effectively eliminates discovery in magistrate's court. Amendments to pleadings are liberally allowed and may even be raised for the first time at trial. S.C.R. Mag. Ct. 12.

The court should be lenient in granting continuances for good cause. However, except in unusual circumstances, no party may be granted more than one continuance. Furthermore, continuances must have the specific approval of the court. *Id.*

The issuance of subpoenas is another problem. A witness who lives more than 20 miles from the magistrate's office cannot be subpoenaed. Furthermore, any witness who is subpoenaed must be personally served with the subpoena at least 24 hours before attendance is required. Finally, the subpoena should be **[*35]** issued by the magistrate rather than the lawyer's office. S.C. Code. Ann. § 22-3-930 (Law. Co-op. 1989).

One way around the territorial limitations of the subpoena is the ability to take testimony *de bene esse*. Under this procedure, a magistrate or other officer authorized by law to administer oaths in another jurisdiction can take the testimony of a witness provided both parties are given notice in time to be present. If the parties choose not to be present, they still can present interrogatories and cross-interrogatories on four days notice to the other side. The officer taking the testimony must then seal it, endorsing the title of the case, and either send it by a disinterested person or mail it with the postage prepaid to the magistrate trying the case. [S.C. Code Ann. § 22-3-940](#) (Law. Co-op. 1989).

Another pretrial procedure, change of venue, also differs procedurally from circuit court. Upon two day's notice to the other side, either side can file an affidavit alleging that side can not obtain a fair trial. Each side is entitled to only one change of venue. The wording of the statute seems to indicate that the magistrate must change venue to the nearest magistrate not disqualified from hearing the case if the affidavit is filed. [S.C. Code Ann. § 22-3-920](#) (Law. Co-op. 1989).

A final pretrial procedure worth noting is jury selection. The current method used in many counties requires the parties to draw names without seeing the potential jurors on a date some time before the trial. See [S.C. Code Ann. § 22-2-90](#) and [§ 22-2-100](#) (Law. Co-op. 1989). This method presents numerous problems, including possible denial of due process by preventing the parties from observing potential jurors.

A preferable alternative is the setting of terms of court with the summoning of a jury venire. [S.C. Code Ann. § 22-2-90](#) (Law. Co-op. 1989).

TRIAL MATTERS

Litigation in magistrate's court can best be described as trial by ambush. In addition to the absence of discovery, procedure allows variance between pleadings and proof unless the adverse party has been prejudiced or misled.

S.C. Code Ann. § 22-3-260 (Law. Co-op. 1989). While this practice may seem repugnant, attorneys practicing in magistrate's court should be aware of its existence.

Furthermore, the court itself must inform unrepresented litigants of a counterclaim even if its existence is not apparent until the middle of the trial. The court is required to determine if the defendant wants to proceed on the counterclaim and if the plaintiff wants the trial to proceed or have the case continued. S.C.R. Mag. Ct. 8(b).

POST TRIAL PROCEDURES

Some differences in procedure also exist after the trial has ended. For example, a party has 30 days from [*36] notice of the judgment to appeal to the circuit court. However, written notice is not required when the judgment is announced at trial in the presence of the appellant or the appellant's lawyer. [S.C. Code Ann. § 18-7-20](#) (Supp. 1995).

The motion for a new trial is not a mandatory prerequisite to the filing of an appeal. However, if the attorney wishes to make the motion, it must be made within five days from rendering of the judgment. If the motion is denied, the right of appeal exists for 25 days after refusal of the motion. [S.C. Code Ann. § 22-3-1000](#) (Supp. 1995).

The appeal should be filed with the clerk of circuit court and the magistrate's court and served on all parties. S.C.R.Civ.P. 74. To effect a supersedeas, the appellant must file a good and sufficient bond with surety to pay the amount of the judgment and costs should the appeal not be sustained. [S.C. Code Ann. § 18-7-10](#) (Law. Co-op. 1976).

After 10 days and within 30 days after service of the notice of appeal, the magistrate must make a return to the circuit court, including testimony, proceedings and judgment. [S.C. Code Ann. § 18-7-60](#) (Law. Co-op. 1976). As a legal matter, this section seems to place the duty to provide a transcript on the magistrate. As a practical matter, few magistrates are provided with the staff and equipment to transcribe trials.

To obtain reversal of a judgment in magistrate's court, the appellant must show error at trial resulting in prejudice or influencing adverse judgment. [Stukes v. Life Ins. Co., 163 S.C. 216, 161 S.E. 478 \(1931\)](#).

The circuit court may affirm or reverse, in whole or in part, as to any or all of the parties, and for errors of law or fact, giving judgment according to the justice of the case "without regard to technical errors and defects which do not affect the merits." [S.C. Code Ann. § 18-7-170](#) (Law. Co-op. 1976). This scope of review includes authority to reverse findings of fact even if they have been determined by a jury. [Truluck v. Atlantic C.L.R. Co., 110 S.C. 92, 96 S.E. 254 \(1918\)](#). However, the circuit court can only rule on findings of fact to which an exception was raised. [Burns v. Gower, 34 S.C. 160, 13 S.E. 331 \(1891\)](#).

CONCLUSION

As can be seen from a comparison of rules, magistrate's court practice is dramatically different from circuit court practice. Just as lawyers study the family court rules and the federal court rules before appearing in those courts, they should also study magistrate's court rules before appearing in magistrate's court. Such preparation will make practice in magistrate's court more effective and more enjoyable.

Graphic

FIGURE, Illustration by Trahern Cook

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