

The Difference between an Order and a Judgment

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. It is recorded on the appropriate AOC-CVM judgment form, signed by the magistrate, and filed with the clerk. *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. In the larger legal world, to say a case is *dismissed* means that it has been finally disposed of without the parties having produced evidence and the court 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 is . . .not. Instead, the other (confusingly termed a *dismissal*) brings a case to an end without a judgment being entered. The AOC form for recording a dismissal—and actually other significant events occurring during the lifetime of a case—is G-108, the generic *Order* form. G-108 is used to record a dismissal in any of the following events:

- 1) The plaintiff has decided not to proceed with the case at this time, and has not yet finished presenting evidence (a *voluntary dismissal*).
- 2) The plaintiff has completed presenting evidence, but asks to dismiss and the court allows it (also a *voluntary dismissal*).
- 3) The plaintiff failed to appear for trial (an *involuntary dismissal*).
- 4) Neither party appeared for trial (an *involuntary dismissal*).

The AOC Order form has checkboxes allowing a magistrate to indicate that a dismissal is with or without prejudice. A *dismissal with prejudice* bars the plaintiff from later filing an identical action. A *dismissal 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 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.