

1978 S.C. Op. Atty. Gen. 117 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-90, 1978 WL 22570

Office of the Attorney General

State of South Carolina

Opinion No. 78-90

May 9, 1978

**\*1 SUBJECT: Default Judgments in Tort Actions in the Magistrate Courts**

1. Magistrates may award default judgments only in contract actions. [Section 22-3-270, 1976 Code](#).
2. In tort actions in magistrate's courts, plaintiff may recover only upon appearing and proving his case. [Section 22-3-70, 1976 Code](#).
3. Defendant need not be personally present to defend tort actions in magistrate's courts, provided he has been properly served with summons and complaint as required by law.
4. Arrest and bail in civil actions as provided by statute applies in magistrate's courts as well as circuit courts. [Sections 15-17-20 and 15-17-40, 1976 Code](#).
5. Provisions of arrest and bail statutes must be strictly complied with. [Sections 15-17-10 to 15-17-90, 1976 Code](#).

TO: Mr. Neal Forney  
Assistant Director  
South Carolina Court Administration

QUESTIONS PRESENTED:

1. Do the provisions of [Section 22-3-270 of the 1976 Code](#) of Laws pertaining to default judgments apply to actions on torts as well as contracts?
2. Does the concluding sentence of [Section 22-3-270 of the 1976 Code](#) of Laws apply to tort actions?
3. Is it necessary that the defendant in a tort action appear before the court in person to be tried?
4. Do the provisions of [Section 15-17-20 of the 1976 Code](#) of Laws apply to the magistrate courts?
5. Do the provisions of [Section 15-17-70 of the 1976 Code](#) of Laws apply in magistrate courts?

AUTHORITIES INVOLVED:

[Section 22-3-270, 1976 South Carolina Code](#) of Lws

[Section 15-17-20, 1976 South Carolina Code](#) of Laws

[Section 15-17-40, 1976 South Carolina Code](#) of Laws

Section 15–17–70, 1976 South Carolina Code of Laws

2A. Sutherland on Statutory Construction, Sections 51.01, 51.03 (4th ed.)

DISCUSSION:

You have posed five questions concerning civil actions in magistrate courts.

1. First, you inquire whether the provisions of [Section 22–3–270 of the 1976 Code of Laws of South Carolina](#), which pertains to default judgments, applies to actions on torts as well as contracts. It is our opinion that it does not inasmuch as the provisions of that section expressly apply to actions on contract. That section, furthermore, contains an express limitation in its last sentence, which declares: ‘In all other cases when the defendant fails to appear and answer the plaintiff cannot recover without proving his case.’ Therefore, it must be concluded that the provisions of [Section 22–3–270](#) apply only to default judgments in actions on contract.

2. Regarding the last sentence of [Section 22–3–270](#) quoted above, you have inquired whether that provision applies to tort actions. While it might be argued that the subject sentence applies only to contract actions other than as may be specifically provided therein, the essence of that sentence comports with the general law in this regard which generally requires the plaintiff to introduce to the court proof of his allegations which would afford a basis for his claim. Therefore, whether that sentence applies generally or specifically to [Section 22–3–270](#) appears to be of no consequence inasmuch as the plaintiff cannot recover without proving his case in any event. By failing to appear the defendant has merely elected not to contest the plaintiff’s evidence, which evidence the magistrate must nevertheless weigh in considering the plaintiff’s allegations and proof.

\*2 3. You have also inquired whether it is necessary that the defendant in a tort action appear before the court in person to be tried. The physical presence of the defendant is not required if he has been properly served with the summons and complaint. Upon proper service of the summons and complaint, jurisdiction vests in the court. However, if service has not been properly effected, then jurisdiction may be accomplished through an appearance by the defendant or his counsel at the scheduled time to answer the complaint. Nevertheless, as a general rule, if the defendant has been properly served, it is not necessary that he be brought before the court in person for trial. Having lawful notice of the claim, the defendant may elect in his own discretion to appear and answer the complaint or he may decline to appear and respond. However, that is his decision, and in such instances, would not affect the court’s jurisdiction in the least.

4. You have also asked whether the provisions of [Section 15–17–20 of the 1976 Code of Laws](#) applies to the magistrate courts. [Section 15–17–20](#) authorizes the arrest and bail of a defendant in a civil action for an injury to person or character or for injury for wrongful taking, detaining or converting property. That section makes no reference to which courts its provisions might specifically apply or except. However, a companion provision, [Section 15–17–40](#), provides: An Order for the arrest of the defendant must be obtained from a judge, magistrate, or clerk of the court in which or before whom the action is brought.

Inasmuch as these two statutes clearly pertain to the same subject matter, it appears that they should be considered to be *in pari materia* and, therefore, should be construed together. 2A, Sutherland on Statutory Construction, Sections 51.01, 51.03 (4th ed.). Accordingly, it is our opinion that the provisions of [Section 15–17–40](#) indicate an intention on the part of the Legislature to apply the provisions of [Section 15–17–20](#) to the magistrate courts.

5. Finally, you have asked whether the provisions of [Section 15–17–70 of the 1976 Code of Laws](#) which pertain to the contents and serving of an order for arrest in civil actions apply in magistrate courts. For the same reasons stated above, it is the opinion of this Office that those provisions do apply to the magistrate courts.

CONCLUSION:

1. As to your question of whether the provisions of [Section 22-3-270 of the 1976 Code of Laws of South Carolina](#) pertaining to default judgments apply to actions on torts as well as contracts, it is the opinion of this Office that the provisions of [Section 22-3-270](#) apply only to default judgments in actions on contract.
2. As to your question of whether the concluding sentence of [Section 22-3-270 of the 1976 Code of Laws](#) applies to tort actions, it is the opinion of this Office that whether that sentence applies generally or specifically appears to be of no consequence inasmuch as the plaintiff cannot recover without proving his case. Even without the appearance of the defendant, the magistrate must nevertheless weigh the evidence.
- \*3 3. As to your question of whether the defendant must appear in person before the court to be tried, it is the opinion of this Office that if the defendant has been properly served, he need not appear. Having been lawfully served, the defendant's appearance, or lack of it, does not affect the court's jurisdiction.
4. As to your question as to whether the provisions of [Section 15-17-20](#) apply to the magistrate courts, it is the opinion of this Office that the provisions of [Section 15-17-40](#) indicate an intention on the part of the Legislature to apply the provisions of [Section 15-17-20](#) to the magistrate courts.
5. As to your final question as to whether the provisions of [Section 15-17-70](#) apply in magistrate courts, it is the opinion of this Office that those provisions do apply.

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