

Part 5. Small Claims Court

[N.C. Gen. Stat. § 7A-210 – § 7A-232](#)

The following information has been provided by the North Carolina Attorney General's Office. This chapter will briefly outline what a small claims court is and who can use small claims court. While this option is less formal, expensive, and time consuming, it is not a retailer's only option.

Chapter 23. Introduction to Small Claims Court

Section 1. What is a Small Claims Court?

Small claims courts exist in every county in North Carolina. These courts help people resolve disputes over small amounts of money or personal property quickly, easily, and without a lawyer. These courts can handle cases where no more than \$25,000 in money or property is in dispute. The cases are tried before special judges called magistrates, usually within a month after the case is filed.

Proceedings in small claims courts are informal, but the magistrate's decision is legally binding.

Section 2. Who Can Use Small Claims Court?

Anyone 18 years old or older may sue, or be sued, in a small claims court. Parents or guardians can go to small claims court on behalf of someone younger than 18.

If the case you are filing involves a contract, read it carefully. Many contracts today include an arbitration clause. An arbitration clause requires certain disputes be settled by an arbitrator, rather than through the court system. If your contract has an arbitration clause and you file a case in a small claims court, the person you are suing can request the magistrate dismiss the case. If you believe that the arbitration clause is extremely unfair, you should ask a lawyer for help.

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Chapter 24. Getting Your Case to Court

The following sections will outline how to get a case in small claims court. It will include information about where to sue, how to file a complaint, how to serve the summons for a lawsuit, and what to do if your dispute settles before trial.

Section 1. Where Do I Sue?

If you are the person filing the complaint, you are the *plaintiff*. The person or business you are filing a case against is the *defendant*. You are required to file your suit where the defendant lives. If you are filing a case against multiple defendants, you must file your suit in a county where at least one of the defendants lives. If you are thinking of filing a case against someone younger than 18 or who is mentally incompetent, please contact a lawyer for help.

If the defendant is a business, file your complaint in the county where it does business. Name the owner(s) of the business as the defendant in your case. Anyone who does business under a name other than his own must register his assumed name with the Register of Deeds in each county where he conducts business. Be very careful to choose the correct county when filing a case against a business, since some cities and towns in North Carolina straddle county lines.

When suing a corporation, you must use its correct corporate name on all court documents. Corporations that do business in North Carolina are required to register with the Secretary of State's office. Call the Secretary's office to find out the proper corporate name, and the name and address of the person registered as the agent of the corporation. You can call or visit the website of the Secretary for this information. Please use the following information to contact the Secretary's office:

Secretary of State

Phone: (919) 807- 2225

Website: www.secretary.state.nc.us/corporations

If the corporation you want to sue is registered in another state, you must file your claim in district or superior court. In these circumstances, you will probably need the help of a lawyer.

Section 2. What is a Complaint?

A small claims case is started when a complaint is filed in the office of the Clerk of Superior Court in the county where the defendant lives or does business. The complaint should include the following:

- 1) The name of the defendant;
- 2) Where the defendant lives or does business;
- 3) What the defendant owes you;
- 4) Why the defendant owes you what you said he does; and
- 5) A clear statement of what you are asking the court to do for you.

The Clerk of Superior Court or any assistant clerks are not allowed to offer legal advice and cannot help you draft a complaint.

You, as the plaintiff, must pay a clerk fee to file your complaint. As of 2015, the filing fee is \$96 for each claim you file. If you win, the magistrate judge that presided over your case has the option of including the filing fee in the money to be awarded to you.

The clerk will help you set up a time and date for trial, which is usually no more than 30 days from the day you filed your complaint.

Section 3. What is a Summons?

One of the forms the clerk will give you is a *summons*. This is a notice to the defendant to appear in small claims court at the appointed time. The law requires that the defendant must receive notice so that he will have an opportunity to prepare for trial. A copy of both the summons and complaint must be served on each defendant. You may have these papers served on the defendant by the county sheriff, or you may serve the papers by certified mail with return receipt requested.

As of 2015, the usual fee for a sheriff to serve the defendant is \$30 per service. This is the preferable method of service because the sheriff will provide the court with proof that the defendant received the papers. In most counties, the clerk of court will collect the service fee at the same time as the filing fee, and send the summons and complaint to the sheriff for service.

If you choose to serve the papers by mail, you must:

- 1) Mail a copy of the summons and complaint to the defendant;
- 2) By registered or certified mail, return receipt requested; and
- 3) With full postage and fees prepaid.

A corporation can be served by the sheriff or by mail. If served by the sheriff, copies can be delivered either to the registered agent or an officer, director or managing agent. If served by certified mail, the copies must be addressed either to the registered agent or to the corporate officer at his address.

Regardless of whether the defendant is an individual or corporation, if the defendant cannot be found within 90 days of the date the previous summons was issued, you may ask the clerk to issue another summons and you can try again if you have a better address.

You should also file an affidavit proving the defendant received the papers. Your affidavit is a written statement affirming that the summons and complaint were properly served upon the defendant, and that the papers were delivered to the appropriate person. Attach the original return receipt to the affidavit, bring it to a notary public, sign it in his presence, and have it notarized.

If you do not file an affidavit, be sure to take the return receipt with you to the trial.

Section 4. What Happens if I Settle with the Defendant?

If you and the defendant are able to settle the dispute before trial, inform the clerk's office or magistrate. The suit will then be dismissed. However, the clerk's office will not refund your filing and summons fees. You should consider these fees when deciding upon the amount of the settlement.

Chapter 25. The Trial

A trial in small claims court is simple and informal. The following sections are intended to give you an idea of how to prepare for a trial in small claims court, what happens in a small claims trial, and what happens after the conclusion of the trial.

Section 1. How Do I Prepare for Trial?

Before going to trial, think carefully about what you need to prove to the magistrate. What contracts, receipts, sales tickets or other documents help your case? What witnesses do you need? Remember that witnesses must have first-hand knowledge in order to testify.

If a person has first-hand knowledge of facts that can help you prove your claim, you should try to have him present at the trial. Sometimes a person who could be a witness for you will not want to testify. In such circumstances, you can get a subpoena from the Clerk of Superior Court. A *subpoena* is a court order that requires the witness to appear at the trial. The sheriff's office will serve the subpoena on the witness, and you must pay a small fee for this service.

A witness who is subpoenaed is entitled to a fee and, if he comes from out of the county, travel expenses. The court usually will require the party who loses the case to pay these costs. However, you must be prepared to pay these costs in advance.

If you find that you cannot be in court at the scheduled time, tell the magistrate at once. He may be able to set another date. If you do not appear when your case is scheduled for trial, it will be dismissed, and you may not be permitted to file it again. The clerk's office cannot postpone a trial in small claims court.

Section 2. What Happens at Trial?

On the day of the trial, you must arrive at court at the scheduled time and be sure to bring all papers, documents, and other evidence you will use to prove your case. Remind your witnesses in advance when and where to come. If your witnesses are not on time, and the defendant is ready for trial, the magistrate is not likely to grant a postponement, unless you have subpoenaed the witnesses.

The trial proceedings are informal and simple. You, the defendant, any other witnesses, and the magistrate will probably be the only ones present. There will be no jury. The magistrate will tell you what you are expected to do.

The magistrate will ask you to take an oath and then state your case. Tell your story simply and truthfully. Present the evidence you think will help prove your case. The magistrate may ask you some questions, and will allow the defendant to ask you questions. Then your witnesses will testify and may be questioned. The defendant's testimony will follow. The defendant's version of the facts may be different from yours, but the magistrate will allow you to question him. The defendant will call his witnesses, and you may cross-examine those witnesses after they have testified. Remember, you may ask only questions that are relevant to the facts of the case.

The magistrate will make his judgment on the case after hearing all the witnesses and examining the evidence. The *judgment* is the magistrate's decision regarding which party is entitled to what. The magistrate may enter judgment immediately, or may take up to 10 days to consider the case. Neither side may present more evidence during those 10 days. The judgment is recorded by the clerk's office as a permanent court record.

Section 3. What Happens After Trial?

If the judgment is in your favor and the defendant has not complied within ten days of the magistrate's signature on the judgment, you may initiate the collection process. If the defendant is a corporation, you may pay a small fee and have the clerk's office issue a court document directing the sheriff to seize and sell some of the defendant's property to satisfy the judgment. This document is a *Writ of Execution*.

If the defendant is an individual rather than a corporation, you must take additional steps before the clerk can issue the Writ of Execution. The clerk's office must issue a document known as a *Notice of Rights to Have Exemptions Designated*, informing the defendant that he has the right to set aside certain property, or if he cannot afford to pay immediately, you may be able to have the judgment executed at a later time. You must then have the document served upon the defendant, either through the sheriff's office or by certified mail, return receipt requested.

Judgments remain on record for ten years and are renewable for another ten. The party who loses can appeal the decision within ten days. The magistrate will tell you how to do this. If you appeal, you must pay the clerk an additional fee.

Chapter 26. Appeals to District Court

There will be a “winner” and a “loser” in a small claims court. Sometimes, the plaintiff will not be able to recover what he thinks he should; sometimes the defendant will be required to pay a judgment she thinks she shouldn't. This chapter is intended to inform you what to do if you wish to appeal a magistrate's judgment in a small claims case.

Section 1. What Happens if I Appeal the Magistrate's Judgment?

If either party appeals the case, a new trial will be scheduled in district court. This trial proceeds as if there had been no previous trial. Either party may request a jury trial, but the request must be in writing. If neither party requests a jury trial, the judge will act as the jury.

Proceedings in district court are more formal, lengthy, and expensive, especially with a jury. Any additional legal papers the judge may require you to file are not available as forms from the clerk. Though not a requirement, many people find it desirable to hire an attorney for proceedings in district court.

If you elect not to hire an attorney, you can prepare for trial in much the same way as you did for small claims court. The clerk will send you a notice or court calendar informing you of when to appear for trial. Be sure the clerk's office has your correct mailing address. If you do not appear, the court may enter judgment against you.

Chapter 27. What to Expect if You're the Defendant

Sometimes, retailers find themselves in the unfortunate position as a defendant in small claims court. Below you will find information to help you understand what to do if a person files a claim against you in small claims court.

Section 1. What Can I Expect as a Defendant in Small Claims Court?

If you are sued in small claims court, you do not need to hire an attorney. Presenting a defense in small claims court is not complicated or difficult. Read the complaint and summons carefully, so you will know what the case is about and when you must appear in court. If you think you can handle it on your own, begin to prepare at once. If not, consult a lawyer immediately.

If someone is suing you to collect a debt that you owe, offer to pay the debt or arrange some way to settle the case before the trial. If you settle before trial, make sure the plaintiff informs the clerk of court or magistrate so that the case can be dismissed. Do not settle simply to avoid trial. If you believe you do not owe any part of what the complaint states, or you cannot settle with the other side, you should go to trial and defend your position.

You may respond to the complaint and present your side of the story in writing by filing an *answer* with the clerk before the trial. While you are not required to file an answer, it may help the magistrate understand your case. In any event, you must go to court at the time of trial in order to testify. You may bring other witnesses, and you may have them subpoenaed if they will not come voluntarily.

If you have a claim amounting to no more than \$10,000 against the plaintiff, you may file a *counterclaim* as part of your written answer. For example, a landlord may sue the tenant for unpaid rent and money for property damage, and the tenant may file a counterclaim for the return of her security deposit.

It is very important that you and your witnesses appear in court for trial on time. If you do not appear, the magistrate may hear the case without you. If you are not able to be there at the scheduled time, contact the magistrate and ask for a postponement immediately.