

# SMALL CLAIMS PROCEDURE

An Introduction

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**BUT FIRST,  
A LOOK  
BACK.**



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**THE TERM FOR A LAW  
ENACTED BY THE NC  
GENERAL ASSEMBLY  
IS**

**YES**  
An ordinance

**NO**  
A statute

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## STATE V. KNOLL, 422 N.C. 535 (1988) WAS DECIDED BY WHICH NC APPELLATE COURT?

**YES** NC Court of Appeals      **NO** NC Supreme Court

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An experienced judicial official can correctly decide most civil cases even without knowing the formal essential elements of the claim, so long as the judge has a pretty good idea of the particular facts.

**YES** True      **NO** False

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	GS Ch. 1A-1, Rules of Civil Procedure	GS Ch. 7A, Art. 19 Small Claims Actions in District Court	GS Chs. 7A & 42, miscellaneous special rules for SE actions
Continuance	Rule 40(b): A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require.	GS 7A-218: By consent of all parties the time for trial may be changed from the time set. For good cause shown, the magistrate to whom the action is assigned may grant continuances from time to time.	GS 7A-213(b): Only for good cause, and then for a maximum of five days or until the next session of small claims court, whichever is longer, without the consent of both parties.
Motion to dismiss based on insufficient complaint	Rule 12(b)(3): Failure to state a claim upon which relief can be granted is grounds for dismissal.	GS 7A-216: Demurrers and motions to challenge the legal and formal sufficiency of a complaint in an assigned small claim action shall not be used.	
Failure of defendant to contest allegations in complaint	Rule 55: Default judgment	GS 7A-222(c): At the conclusion of plaintiff's evidence the magistrate may render judgment of dismissal if plaintiff has failed to establish a prima facie case.	GS 43-30: Judgment on the pleadings

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### Learning the rules of small claims procedure

#### APPROACH

1. Mandatory rules
2. Heads' up for others
3. Recognizing att'y errors
4. Guiding principles

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Mandatory Rule #1:  
You Must Have  
Subject-Matter  
Jurisdiction




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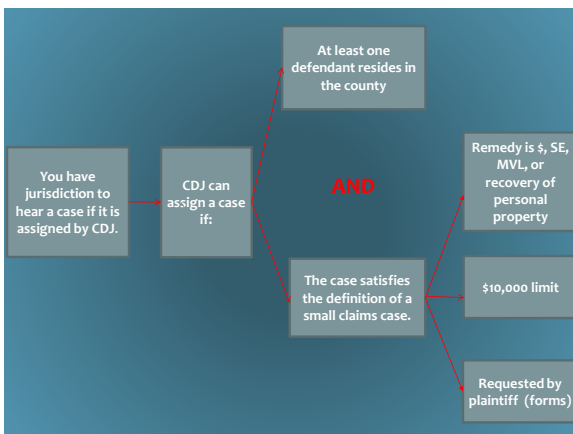
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**Sample General Order regarding Small Claims Assignments and Magistrates' Authority**  
Pursuant to G.S. 7A-211 the undersigned judge issues this general order to the Clerk of Superior Court and the magistrates of \_\_\_\_\_ County regarding the assignment of cases to small claims court within the county.

The undersigned hereby assigns and requests the Clerk to calendar to small claims court those cases which meet all of the following four requirements:

1. The amount in controversy at the time of the filing of the complaint is \$10,000 or less;
2. The plaintiff is seeking monetary damages, recovery of specific personal property, summary ejection, or any combination of these remedies;
3. The plaintiff requests that the case be assigned to a magistrate<sup>1</sup>; and
4. At least one of the defendants is a resident of the county in which the complaint is filed.

Cases filed on small claims complaints but not meeting the criteria set out above are not assigned and should be sent to district court.

In determining whether the amount in controversy is within the allowable limit, the clerk shall apply the following rules:

- In complaints for money owed, the "total amount owed" is the amount in controversy, except if the complaint alleges an unfair trade practice the amount in controversy is triple the total amount owed.
- In summary ejection cases, the amount in controversy is the "total amount due."
- In actions to recover possession of personal property, the amount in controversy is the "total

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### IS THE CASE ELIGIBLE FOR SMALL CLAIMS?

- Did plaintiff request small claims?
- Is the amount in controversy \$10,000 (\$5,000) or less?
- Is the plaintiff asking for money, recovery of personal property, summary ejection, or a motor vehicle lien?
- Does at least one defendant live in the county?

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**STATE OF NORTH CAROLINA**  
County: \_\_\_\_\_  
In The General Court Of Justice  
District Court Division-Small Claims

**COMPLAINT FOR MONEY OWED**

1. The defendant is a resident of the county named above.  
2. The defendant owes me the amount listed for the following reason:

Principal Amount Owed	\$
Interest Owed (if any)	\$
Total Amount Owed	\$

Other: (specify)

I demand to recover the total amount listed above, plus interest and reimbursement for court costs.

Name of Plaintiff or Attorney (Type Or Print) \_\_\_\_\_ Signature of Plaintiff or Attorney \_\_\_\_\_

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Mandatory Rule #2:  
You must have jurisdiction  
over the Δ: service of process  
or appearance



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**HAS THE Δ  
RECEIVED  
PROPER  
NOTICE OF  
THE  
ACTION?**

- Has the defendant been served?
  - By the sheriff
  - By certified mail
  - By delivery service
  - By publication
  - By posting (SE only)
- OR
- Has the defendant appeared?
  - By being present at trial
  - By filing an answer or motion

*Here's where due process comes in!*

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MAGISTRATE SUMMONS	
<input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE)	
G.S. 1A-1, Rule 4:7A-217, -232	
Defendant(s)	Date Original Summons Issued
	Date(s) Subsequent Summons(es) Issued
TO	TO
Name And Address Of Defendant 1	Name And Address Of Defendant 2
<b>A Small Claim Action Has Been Commenced Against You!</b>	
You are notified to appear before the magistrate at the specified date, time, and location of trial listed below. You will have the opportunity at the trial to defend yourself against the claim stated in the attached complaint.	
You may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court at any time before the time set for trial. Whether or not you file an answer, the plaintiff must prove the claim before the magistrate.	
If you fail to appear and defend against the proof offered, the magistrate may enter a judgment against you.	
Date Of Trial	Time Of Trial
	Location Of Court
Name And Address Of Plaintiff Or Plaintiff's Attorney	Date Issued

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RETURN OF SERVICE	
I certify that this summons and a copy of the complaint were received and served as follows:	
<b>DEFENDANT 1</b>	
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM Name Of Defendant
<input type="checkbox"/> By delivering to the defendant named above a copy of the summons and complaint. <input type="checkbox"/> By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein, who is named below. <input type="checkbox"/> As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.	
Name And Address Of Person With Whom Copy Left (if corporation, give title of person copy left with)	
<input type="checkbox"/> Other manner of service (specify)	
<input type="checkbox"/> Service was made by mailing by first class mail a copy of the summons and complaint to the defendant(s) and by posting a copy of the summons and complaint at the following premises: Date Served: _____ Name(s) Of The Defendant(s) Served By Posting: _____ Address Of Premises Where Posted: _____	
Service Fee \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Deputy Sheriff Making Return (type or print)
Date Of Return	County Of Sheriff

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STATE OF NORTH CAROLINA	
County _____	
In The General Court Of Justice District Court Division	
Name Of Plaintiff	<b>AFFIDAVIT OF SERVICE BY</b>
<b>VERSUS</b>	<input type="checkbox"/> REGISTERED MAIL <input type="checkbox"/> CERTIFIED MAIL <input type="checkbox"/> DESIGNATED DELIVERY SERVICE
Name Of Defendant	O.S. 14-3, Rule 4.1(d)
I, the undersigned, did mail by <input type="checkbox"/> registered mail <input type="checkbox"/> certified mail (return receipt requested), <input type="checkbox"/> designated delivery service, a copy of the foreign child custody order and Notice of Registration of Foreign Child Custody Order filed by plaintiff in the above captioned action to person to be served.	
addressed as follows:	
Further, that copies of the foreign child custody order were in fact received by the person to be served on (date of receipt) _____ as evidenced by the attached original receipt. (Attach original receipt to this affidavit.)	
<b>SUBSCRIBED AND SUBSCRIBED TO BEFORE ME</b>	
Signature Of Plaintiff/Attorney At Law/Notary Public	Signature Of Notary Public
<input type="checkbox"/> Notary Public <input type="checkbox"/> Notary	Name/Title Of Plaintiff
SEAL	County Where Subscribed

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Small group assignment: identify the proper complaint form and figure out how to fill out the complaint for the following fact situations:

Group 1: You are suing your neighbor to recover possession of your prize pig, Precious, who is worth \$500, but is priceless to you! You also want punitive damages.

Group 2: You are suing to have your tenants evicted for failing to pay rent and repeatedly stopping up the toilet and having loud parties, all of which are prohibited by the lease. Rent is \$600/month, payable on the first, on this month-to-month lease, and the tenant has missed 3 payments and also owes late fees for those three months at \$15 each.

Group 3: You sold defendant a 2011 Cruiser for \$10,000 in exchange for defendant's agreement to pay off the debt in 20 installments. Defendant paid 15 installments but then stopped paying. You want to repossess the car, which your written agreement allows you to do.

Group 4: You are suing three teenage boys who threw your son into a pool during a pool party for \$5000. Your son – who is unable to swim – was injured in the incident, and his brand new iPhone – which was in his pocket – was destroyed.

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### WHAT'S IN THE SHUCK?

Motion to dismiss for failure to state a claim (12b6)

Rule: Not allowed in small claims court. Consider ordering plaintiff to provide additional information on complaint form, if necessary.

Motion challenging venue or personal jurisdiction (12b2 or 3)

Rule: When filed prior to day of trial, must be heard by DCJ.

Answer

Primary significance is possible counterclaim

Counterclaim

Allowed only if filed prior to time set for trial and must meet requirements for \$ and kind of case.

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### A PARTY MUST APPEAR PRO SE OR THROUGH AN ATTORNEY UNLESS AN EXCEPTION APPLIES

Mandatory Rule #3

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### TWO EXCEPTIONS

For summary ejection cases: agent with personal knowledge of matters alleged in complaint

For business entities such as corporations and LLCs: may appear through agent\*

\* A sole proprietorship + business entity with limited liability; owner or att'y must appear.

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Susan appears in court on behalf of her father, who is the defendant and presently in a nursing home. She shows you a signed power-of-attorney giving her the right to appear on his behalf in legal proceedings. She tells you that he is unable to appear, and that he is unable to afford an attorney. Do you allow her to represent her father?

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Pre-Evidence Checklist: An analytical tool

**Related to  $\pi$**

Name as it appears on complaint: \_\_\_\_\_  
(If 2 names appear in one box, list both.)

Name of person who signed complaint, if different: \_\_\_\_\_

Name of person standing in front of you: \_\_\_\_\_

If not the  $\pi$ , relationship of person to  $\pi$ : \_\_\_\_\_

Name of injured party ( $\pi$ ): \_\_\_\_\_

**Related to  $\Delta$**

How many  $\Delta$ s are listed on complaint (in separate boxes)? \_\_\_\_

Do you have a separate summons for each separate  $\Delta$ ? (circle one) Y N

For each  $\Delta$ :

Name exactly as it appears on complaint: \_\_\_\_\_  
(If 2 names appear in one box, list both.)

Name exactly as it appears on summons: \_\_\_\_\_

Name of person who was served: \_\_\_\_\_

Name of person standing in front of you: \_\_\_\_\_

If not the  $\Delta$ , relationship of person to  $\Delta$ : \_\_\_\_\_

Do you have any indication at this point that someone other than  $\Delta$  is a more appropriate  $\Delta$ ? Y N

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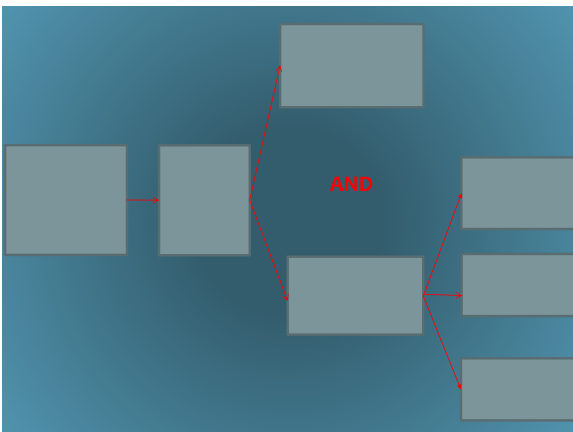
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