

Content Outline for Basic/Module 2: Small Claims Procedure, Part 1

Sources of law

GS Ch. 7A, Art. 19 is primary source of procedural rules applicable in small claims court. The NC Rules of Procedure set out in GS 1A-1 apply to all civil actions unless a different rule is specified and so “fill in the blank” for small claims when Art. 19 is silent. In addition, GS Ch. 42 contains some special procedural rules for summary ejectment cases.

Procedural Issues That Might Come Up Before Trial

Do you have authority to hear this kind of case? MR#1 Subject-matter jurisdiction

- Is it a small claims case? Remedy is money, recovery of property, or SE
 Not available if value exceeds \$10K
 At least one defendant must reside in county

If a case does not meet the requirements to be assigned to small claims court, a magistrate does not have jurisdiction to rule and any judgment entered will be void.

Do you have authority over this defendant? MR#2 Personal jurisdiction

- Has the defendant been served? Check back of summons for return of service.
 Usually sheriff, but also by certified mail/UPS, etc
 No service? Allow π to continue to attempt service unless π wants voluntary dismissal

OR

Has the defendant voluntarily appeared? Usually by showing up, but may also be other action, such as filing answer, counterclaim, or motion for a continuance.

If a defendant has not been served and does not appear, a magistrate does not have authority to enter a judgment against that defendant, and any judgment entered will be void.

Before You Begin Hearing Evidence

Who will present the case for π and Δ ? MR#3 Only party or att’y unless exception applies.

General rule: Unless parties choose to represent themselves, they must be represented by an attorney. Individuals who are not attorneys are engaging in the unauthorized practice of law when they attempt to represent a party in court.

Exception #1: An LLC, corporation, or limited partnership may appear in small claims court, and on appeal to district court, through an agent (quite often, an employee with personal knowledge of the matters alleged in the complaint).

Exception #2: In an action for SE or related money damages, an agent with personal knowledge of the matters alleged in the complaint may sign the complaint and appear in court on behalf of an owner of rental property.