

Small Claims: What Lawyers Need to Know

Small claims procedure is governed in large part by GS Ch. 7A, Art. 19.

The Rules of Civil Procedure apply only when Article 19 does not contain a more specific rule applicable to small claims court. Here are a few of the most significant differences in small claims procedure:

Service by publication is allowed only in (certain) cases involving motor vehicle liens. G.S. 7A-217, -211.1.

Motions to dismiss based on *Rule 12(b)(6)* are not permitted. See GS 7A-216 (referring to such motions by the old common-law term “demurrer”).

The defendant is not required to file an answer, and failure to do so constitutes a general denial. G.S. 7A-218. There are *no default judgments* in small claims, and (with the exception of summary ejectment actions meeting the requirements set out in GS 42-30 for obtaining a judgment on the pleadings) the plaintiff must prove the case by the greater weight of the evidence even if the defendant files no answer and fails to appear at trial.

The compulsory *counterclaim* rule does not apply in small claims court. GS 7A-219.

The result in a case in which the plaintiff fails to produce sufficient evidence to establish a right to relief is a judgment *of dismissal*.

Time periods for service of process, calendaring a case for hearing, and giving notice of appeal *are abbreviated* in small claims court. The procedure overall is less formal, and the rules of evidence are only generally observed. See GS 7A-222.

Appeal of a small claims judgment is to district court for trial de novo.

