

SMALL CLAIMS PROCEDURE

An Introduction

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**BUT FIRST,
A LOOK
BACK.**



2

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

YES

An ordinance

NO

A statute

3

**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-214: 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-223(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)(6): 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(a): 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 42-30: Judgment on the pleadings

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Learning the rules of small claims procedure

APPROACH

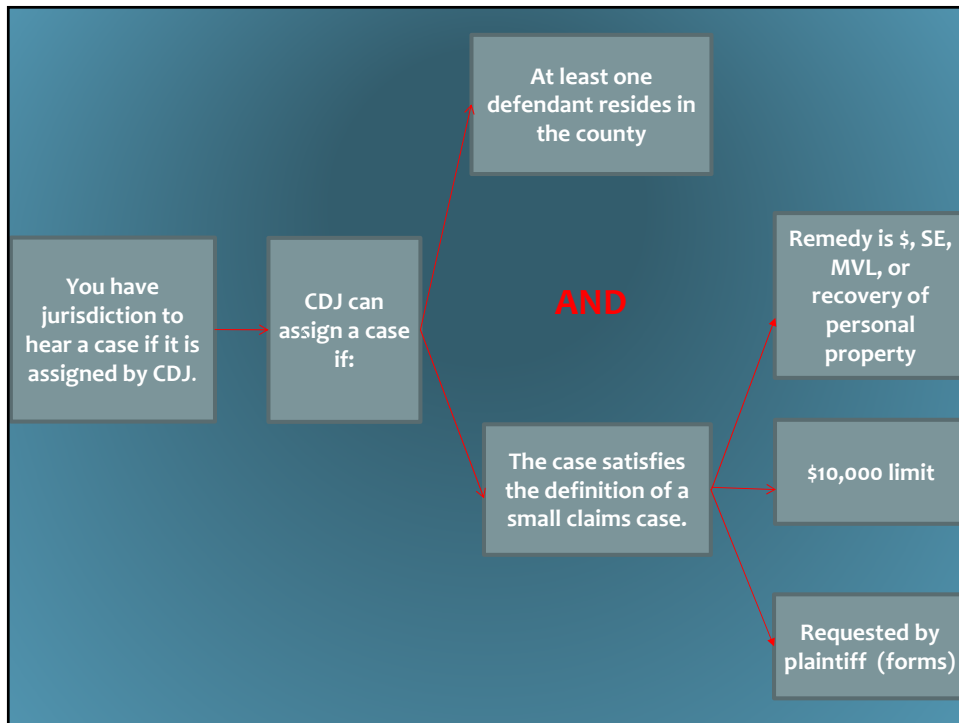
1. Mandatory rules
2. Heads' up for others
3. Recognizing att'y errors
4. Guiding principles

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



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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 ejectment, or any combination of these remedies;
3. The plaintiff requests that the case be assigned to a magistrate¹; 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 ejectment 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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File No.		STATE OF NORTH CAROLINA		In The General Court Of Justice District Court Division-Small Claims	
COMPLAINT FOR MONEY OWED		County			
		1. The defendant is a resident of the county named above.			
G.S. 7A-216, 7A-232		2. The defendant owes me the amount listed for the following reason:		Principal Amount Owed \$	
Name And Address Of Plaintiff				Interest Owed (if any) \$	
				Total Amount Owed \$	
		(check one below)			
County	Telephone No.	<input type="checkbox"/> On An Account (attach a copy of the account)	Date From Which Interest Due	Interest Rate	
VERSUS		<input type="checkbox"/> For Goods Sold And Delivered Between	Beginning Date	Ending Date	Interest Rate
		<input type="checkbox"/> For Money Lent	Date From Which Interest Due		Interest Rate
Name And Address Of Defendant 1 <input type="checkbox"/> Individual <input type="checkbox"/> Corporation		<input type="checkbox"/> On a Promissory Note (attach copy)	Date Of Note	Date From Which Interest Due	Interest Rate
County	Telephone No.	<input type="checkbox"/> For a Worthless Check (attach a copy of the check)			
Name And Address Of Defendant 2 <input type="checkbox"/> Individual <input type="checkbox"/> Corporation		<input type="checkbox"/> For conversion (describe property)			
		Other: (specify)			
County		I demand to recover the total amount listed above, plus interest and reimbursement for court costs.			
Name And Address Of Plaintiff's Attorney		Date	Name Of Plaintiff Or Attorney (Type Or Print)	Signature Of Plaintiff Or Attorney	
		(Over)			
AOC-CVM-200, Rev. 9/13 © 2013 Administrative Office of the Courts					

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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	
VERSUS	
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
A Small Claim Action Has Been Commenced Against You!	
<p>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.</p> <p>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.</p> <p>If you fail to appear and defend against the proof offered, the magistrate may enter a judgment against you.</p>	
Date Of Trial	Time Of Trial <input type="checkbox"/> AM <input type="checkbox"/> PM
	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:	
DEFENDANT 1	
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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FOR SERVICE BY MAIL

STATE OF NORTH CAROLINA		File No.												
_____ County		In The General Court Of Justice District Court Division												
Name Of Plaintiff	AFFIDAVIT OF SERVICE BY <input type="checkbox"/> REGISTERED MAIL <input type="checkbox"/> CERTIFIED MAIL <input type="checkbox"/> DESIGNATED DELIVERY SERVICE <small>G.S. 1A-1, Rule 4 (2)</small>													

VERSUS														
Name Of Defendant	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 (name of 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.)													
_____	<table border="1"> <thead> <tr> <th colspan="2">SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</th> <th>Signature Of Plaintiff/Attorney</th> </tr> </thead> <tbody> <tr> <td>Date</td> <td>Signature Of Person Authorized To Administer Oaths</td> <td>Name (Type Or Print)</td> </tr> <tr> <td><input type="checkbox"/> Notary</td> <td>Date My Commission Expires</td> <td></td> </tr> <tr> <td>SEAL</td> <td>County Where Notarized</td> <td></td> </tr> </tbody> </table>		SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Signature Of Plaintiff/Attorney	Date	Signature Of Person Authorized To Administer Oaths	Name (Type Or Print)	<input type="checkbox"/> Notary	Date My Commission Expires		SEAL	County Where Notarized	
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<input type="checkbox"/> Notary	Date My Commission Expires													
SEAL	County Where Notarized													

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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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Where is the registered office?

Where is the principal office?

Who could be served?

<https://www.sosnc.gov/>

Name NC BILLY'S AUTO SALES, INC.	Name Type LEGAL
Business Corporation Information	
SOSID:	0414445
Status:	Current-Active
Effective Date:	1/3/1997
Citizenship:	DOMESTIC
State of Inc.:	NC
Duration:	PERPETUAL
Annual Report Status:	CURRENT
Registered Agent	
Agent Name:	GARRETT, MELINDA B
Office Address:	2903 NEW LEICESTER HWY LEICESTER NC 28748
Mailing Address:	2903 NEW LEICESTER HWY LEICESTER NC 28748
Principal Office	
Office Address:	2903 NEW LEICESTER HWY LEICESTER NC 28748
Mailing Address:	2903 NEW LEICESTER HWY LEICESTER NC 28748
Officers/Company Officials	
Title:	PRESIDENT
Name:	WILLIAM BROWN
Business Address:	2903 NEW LEICESTER HWY LEICESTER NC 28748-5172
Title:	SECRETARY
Name:	MELINDA B GARRETT
Business Address:	2903 NEW LEICESTER HWY LEICESTER NC 28748-5172

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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 π

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 π , relationship of person to π : _____

Name of injured party (rpil): _____

Related to Δ

How many Δ s are listed on complaint (in separate boxes)? ____

Do you have a separate summons for each separate Δ ? (circle one) Y N

For each Δ :

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

Name exactly as it appears on summons: _____

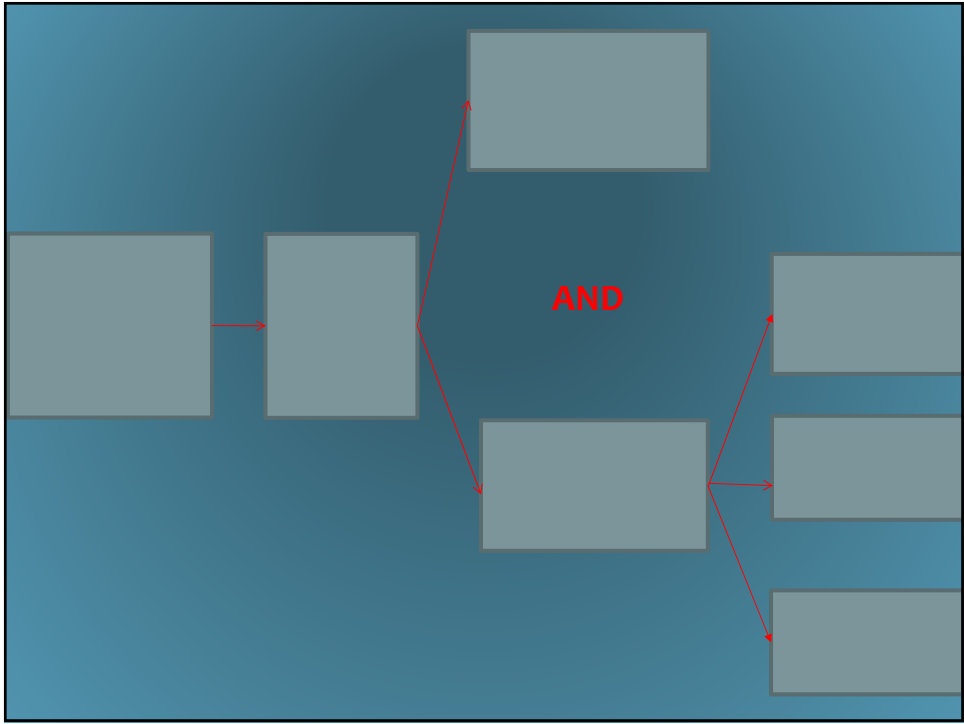
Name of person who was served: _____

Name of person standing in front of you: _____

If not the Δ , relationship of person to Δ : _____

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

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