NORTH CAROLINA
DEPT OF JUSTICE

A CITIZEN'S GUIDE TO SMALL CLAIMS COURT

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Small claims court helps people resolve disputes over small amounts of money or personal property quickly, easily, and usually without lawyers.

In small claims court, disputes involving no more than $10,000 in money or property are decided by special judges called magistrates.

Cases are usually heard within a month after they are filed in small claims court.

Small claims courts are informal, but the magistrates' decisions are legally binding.

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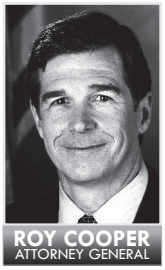

WHO CAN USE SMALL CLAIMS COURT?

Anyone who is eighteen or older can sue (or be sued) in small claims court. Parents or guardians can go to small claims court on behalf of someone who is under eighteen.

If your case involves a contract, read it carefully. Some contracts include a "binding arbitration" clause. This clause requires that certain disputes must be settled by an independent third party (an arbitrator) instead of in court. If your contract contains this clause and you file suit in small claims court, the defendant can ask the magistrate to dismiss your suit.

If you believe the arbitration terms of your contract are extremely unfair, you may want to ask an attorney for advice. ■

HOW TO GET YOUR CASE TO COURT

The person or business you are suing is the defendant. You must file your suit in the county where the defendant or one of the defendants lives. If the defendant is a business, file your suit in the county where it does business. Name the owner (or owners) as the defendant in your suit. You should check the county where the defendant lives or does business very carefully. Cities sometimes straddle county lines and your case may be dismissed if it is filed in the wrong county.

Anyone doing business under a name other than their own name must register their assumed name with the Register of Deeds in each county where they do business.

If the defendant is a corporation, you must use its correct corporate name on all court documents. Corporations doing business in North Carolina are required to register with the Secretary of State's office. Call the Secretary of State's office at ☎ (919) 807-2225 or visit its website ***(www.secretary.state.nc.us/corporations)*** to find out the correct corporate name, and the name and address of the person who is listed as the registered agent for the corporation.

*If a corporation is registered in **another state but not in North Carolina**, do not file suit in small claims court. You will need to file your suit in district court or superior court, and you will probably need the assistance of an attorney.*

*If you wish to file a claim against someone who is **under eighteen or mentally incompetent**, you should ask a lawyer for help.* ■

YOUR COMPLAINT

Start your case by writing your complaint and filing it in the office of the Clerk of Superior Court. The complaint should explain who you are suing, where the defendant lives or does business, what the defendant owes you, and why. At the end of your complaint, clearly state what you are asking the court to do for you.

Several types of complaint forms are available at the clerk's office and online at ***http://www.nccourts.org/Forms/FormSearch.asp***. But remember, a complaint form is just a guide. Make sure your complaint states the facts of your case.

> ***Don't ask the Clerk of Superior Court or the assistant clerks*** *to help draft your complaint. They can't give legal advice.*

You must pay the clerk a fee ***(currently $96)*** to file your claim. If you win the case, the magistrate has the option of adding this cost to the money that will be awarded to you. The clerk will help you set the date and time for the trial, which will usually be ***no more than 30 days*** from when you file your complaint. ■

If You Settle Out of Court

If you and the defendant are able to settle the dispute before trial, inform the clerk's office or the magistrate that you have settled the case out of court. The suit will then be dismissed. If you settle out of court the clerk's office will not refund your filing and summons fees, so you may want to include those costs when negotiating your out of court settlement.

THE SUMMONS

One of the forms the clerk will give you is a summons. This is a notice to the defendant to appear in court at the appointed time. A copy of the summons and complaint must be delivered to (or "served on") each person being sued.

For a fee ***(currently $30 per summons)***, you can have the papers delivered by the county sheriff. Delivery by sheriff is preferable because the sheriff will provide the court with proof that the defendant received the papers.

In most counties, the Clerk will collect the sheriff's delivery fees from you when you file the case, and send the summons and complaint to the sheriff for service.

THE SUMMONS, CONTINUED

You may also have the papers delivered by certified mail. Make sure to ask for "***return receipt requested***" service so you can prove that the papers were received. You should also file an affidavit proving that the papers were received.

Your affidavit is a written statement affirming that the summons and complaint were properly mailed to the defendant by certified mail, return receipt requested, and that the documents were delivered to the appropriate person. Attach the original return receipt, signed by the defendant, to the affidavit. Bring the affidavit to a notary public, sign it in their presence, and have it notarized.

> ***If you do not file an affidavit****, be sure to take the original signed return receipt with you to the trial.* ■

HOW TO PREPARE FOR TRIAL

Before you go to small claims court, think carefully about what you need to prove. What contracts, receipts, sales tickets or other documents can help to prove your case? What witnesses do you need? Remember, witnesses must have first-hand knowledge of the case in order to testify.

If someone has first-hand knowledge of facts that can help you prove your claim, try to have that person present at the trial. Sometimes a person with first-hand knowledge of the case will not want to testify. If so, you can get a subpoena from the Clerk of Superior Court to force the witness to appear at the trial. The sheriff's office will serve the subpoena on the witness for a small fee.

If you find that you or your witnesses cannot be in court at the scheduled time, tell the magistrate at once. The magistrate 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.

> *A subpoenaed witness may be entitled to a fee and, if they come from out of the county, travel expenses. The court usually will require whoever loses the case to pay these costs, but you must* ***be prepared to pay them in advance****.* ■

THE TRIAL

Small claims court is informal. You, the defendant, the witnesses, and the magistrate will probably be the only persons participating. There will not be a jury. The magistrate will tell you what you are expected to do.

The magistrate will ask you to take an oath and then you will 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 the defendant will also be able to ask you questions. If you have any witnesses, they will testify after you. Then the defendant and his or her witnesses will testify. You will be able to ask them questions after their testimony. Remember, you can ask only questions that are relevant to the facts of the case.

The magistrate will make a decision after hearing all of the witnesses. The decision may be announced immediately, but the magistrate can also take up to ten days to consider the case. Neither side may present more evidence during that ten day period. ■

AFTER THE TRIAL

If the magistrate rules in your favor and the defendant has not complied with the ruling within ten days after the magistrate signs it, you may initiate a collection process.

If the defendant is a corporation, you can pay a small fee and have the clerk's office issue a Writ of Execution, which is a court document directing the sheriff to seize and sell some of the defendant's property in order to satisfy the judgment.

If the defendant is an individual, you must take additional steps before the clerk can issue the Writ of Execution. First, the clerk's office must issue a document known as a Notice of Rights to Have Exemptions Designated. That document must be served on the defendant by the sheriff's office or delivered by certified mail, return receipt requested.

The magistrate's ruling will remain on record for ten years and can be renewed for an additional ten years. ■

APPEALS

If the party who loses in small claims court files an appeal within ten days, a new trial will be scheduled in district court.

The party requesting the appeal must pay the clerk a fee ***(currently $92)*** to have the case heard in district court.

APPEALS, CONTINUED

If you can't afford the fee, you may ask the Clerk of Court to waive the fee by filing a Petition to Sue/Appeal as an Indigent. The petition is available as a form in the clerk's office.

Proceedings in district court are more formal, lengthy, and expensive. While you are not required to hire an attorney, most people find it desirable. Any additional legal papers the judge may require you to file are not available as forms from the clerk.

The clerk will send you a notice telling you 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.

Before the case is heard the two parties will usually be directed to meet with an arbitrator, who will listen to both sides and offer what he or she believes is the proper result. There is an arbitration fee (currently $100) and you are responsible for paying half. (If everyone agrees, you can skip arbitration and go straight to court.)

If either party disagrees with the arbitrator's decision, they can still request a trial in district court. But remember, if you request a trial and lose the judge can require you to pay additional costs including the other party's attorneys' fees.

If you decide not to hire an attorney, prepare for district court like you prepared for small claims court. This new trial proceeds as if there had been no previous trial. A district court judge will decide the case unless one of the parties files a written request for a trial by jury. ■

WHEN SOMEONE SUES YOU IN SMALL CLAIMS COURT

Defending yourself in small claims court is not complicated or difficult. You may not need an attorney. 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 by yourself, begin to prepare at once. If not, consult a lawyer immediately.

You do not have to respond in writing to the complaint against you before the trial, but if you choose to do so it may help the magistrate understand your side of the case. Even if you do file a response, you must go to court. You may bring other witnesses or have them subpoenaed if they will not come voluntarily.

If you have a claim of no more than $10,000 against the person who is suing you, you may file a counterclaim as part of your written answer. For example, a landlord may sue a tenant for unpaid rent and money for property damages, and the tenant may counterclaim for the return of a security deposit.

It is very important that you and your witnesses appear 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.

If someone is suing to collect a debt you owe, you can offer to pay the debt or arrange some way to settle the case before the trial. If you settle before the trial, make sure the person suing you informs the magistrate so that the case will be dismissed. ■