

A Guide to

Small Claims Court



Legal Aid of North Carolina, Inc.

August 2018



Anyone 18 or over has the right to start a lawsuit in the North Carolina court system. If the lawsuit is for a claim of \$10,000 or less, it can be brought into Small Claims Court, which is available in every county. This amount may be different in different counties. You should ask the clerk at the courthouse about the maximum amount you can ask for in a Small Claims lawsuit. A person usually does not need a lawyer in Small Claims Court, whether that person is bringing the suit or defending against the suit. In some cases, though, you might need a lawyer, especially involving possible eviction by a landlord.

This booklet is a guide to help you handle your own case in Small Claims Court. It tells you how to fill out the right forms, prepare for trial, handle the trial, and follow through on the judge's decision. This booklet discusses the main situations that arise. An appendix at the end includes more details on certain issues, including where to go for more help.

Legal Aid of North Carolina, Inc. has prepared this booklet as a public service. Legal Aid of North Carolina is a statewide, nonprofit law firm that provides free legal services in civil matters to low-income people in North Carolina, in order to ensure equal access to justice and to remove legal barriers to economic opportunity. However, there still is not enough funding to provide legal services for all the needs of poor people in North Carolina. Our limited staff and resources make it very difficult to represent every client who contacts us. Hopefully, this booklet can help some of those seeking services from Legal Aid of NC to help themselves. Blank forms for you to copy and then use are included at the end of this booklet.

On page 32, please refer to the list of Legal Aid Offices and which counties they serve.

For additional information about Legal Aid of North Carolina, please visit our website, **www.legalaidnc.org**. To apply for services, please contact our Helpline at 866-219-5262 or you may apply online at <http://ww2.legalaidnc.org/apply/>

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A GUIDE TO SMALL CLAIMS COURT

YOU HAVE THE RIGHT TO AN INTERPRETER IN SMALL CLAIMS COURT

The court provides an interpreter free-of-charge to all people who have a case in Small Claims Court (both Plaintiffs and Defendants). To ask for an interpreter for your small claims case, visit the website

<http://www.nccourts.org/LanguageAccess/Documents/InterpreterRequestForm.pdf>.

Fill out the whole application and submit it using the "Submit" button at the bottom of the application to send it in an email format. When the email is created, hit "Send" to send your application. You will receive an electronic confirmation stating that your application has been received. If you don't receive an electronic confirmation within 24 hours, please get in contact with the Language Access Coordinator (LAC) in the county where you have court. You can contact the LAC using the following email address (example):

County.Interpreter@nccourts.org. For example, you can contact the Wake County LAC by sending an email to Wake.Interpreter@nccourts.org. If you have court in another county, put the name of the county where you have court in the email address. You need to submit a new application for each court date where you need an interpreter. Complete the application using Adobe Reader or Internet Explorer. The application to "Request for Spoken Foreign Language Court Interpreter is found at:

<http://www.nccourts.org/LanguageAccess/Documents/InterpreterRequestForm.pdf>

If you have asked for an interpreter and no one has responded, or you have not had success in getting an interpreter, you can submit a complaint to the court system using this complaint form here: <http://www.nccourts.org/Surveys/LA/languageaccess.htm>. Fill out the information about your court date, the case number, the county of court, etc., and explain that you have not received information about how to obtain an interpreter. You should submit it using the "Submit" button at the bottom of the page to send your complaint to the court. You may also make a complaint if you already had court and you did not receive an interpreter.

Finally, if you do not have success in obtaining an interpreter through the electronic application, you can still ask the judge for an interpreter when you are in court. You should say clearly at the beginning of the hearing that you do not speak or understand English fluently and that you are asking for an interpreter.

Remember that a court interpreter is **not** an attorney and cannot give you legal advice about your case.





Language Access Complaint Form

Complaints or concerns about language access services? Submit your complaint or concern here.

The North Carolina Judicial Department is committed to removing barriers that prohibit equal access to justice by individuals with limited English proficiency. To that end, a language access officer has been appointed to receive and address concerns about language access services in the North Carolina state courts.

If you have complaints or concerns about language access services that have been provided to you, or if you have concerns about language access policies and practices within our courts, report your concerns here. Provide appropriate contact information so that we can contact you for additional information if necessary, properly investigate your complaint and respond to you.

The language access officer will address your concerns and attempt to resolve any outstanding language access issues within 30 days of submission of this form.

NOTE: Complete this form only if you have a formal complaint or concern about language access services. If you have general questions, contact the Office of Language Access Services at (919) 890-1407 or send an email to OLAS@nccourts.org.

Contact Information:

First Name:	Required	<input type="text"/>
Last Name:	Required	<input type="text"/>
Address Line 1:		<input type="text"/>
Address Line 2:		<input type="text"/>
City:		<input type="text"/>
State:		<input type="text"/>
Zip Code:		<input type="text"/>
Phone Number:		<input type="text"/>
Email Address:	Required	<input type="text"/>

Information on Incident or Concern:

Date of Incident or Concern:	Required	<input type="text"/>
In what county were you conducting business?	Required	- Select One - <input type="text"/>
	Required	

In what office were you conducting business?	- Select One - ▾
If you have a citation # related to this incident, enter it here:	<input type="text"/>
If you have a case # related to this incident, enter it here:	<input type="text"/>
Please describe what happened with your interaction with the court below: Required	
<div style="border: 1px solid black; height: 80px;"></div>	
If you would like to print this form, do so now, before you click the "Submit" button. Once you press submit, an acknowledgement of the information on this form will be sent to the email address provided.	
<input type="button" value="Clear"/> <input type="button" value="Submit"/>	

SAMPLE

Table of Contents

Chapter 1. What is Small Claims Court	1-5
Chapter 2. If You Are the Plaintiff—How to File Your Claim	6-12
Chapter 3. If You Are the Defendant—What to Expect.....	13
Chapter 4. How to Prepare for Trial.....	14-16
Chapter 5. The Small Claims Court Trial	17-19
Chapter 6. After the Trial.....	20-26
Chapter 7. Appeals to District Court.....	27-29
Appendix	30-31
List of Legal Aid of NC Offices	32
Blank Forms for Small Claims Court	

Chapter 1

What is Small Claims Court?



Small Claims Court is part of the North Carolina court system where people settle disputes regarding property or money worth *\$10,000 or less*. Every county in North Carolina has a Small Claims Court, which is sometimes called Magistrate's Court, the maximum amount you can sue for may be different in different counties. You should check with the clerk at the courthouse to find out the maximum amount you can ask for in a Small Claims lawsuit.

The judge, called a magistrate, may or may not be a lawyer. There is no jury. The trial is quick and informal, usually lasting no more than 15 or 30 minutes. You don't have to have a lawyer to represent you in Small Claims Court, but you *may* have a lawyer. The person who starts the lawsuit is the *plaintiff*. The person being sued is called the *defendant*.

In the three cases below, you would be the plaintiff:

- A repairman came to fix your refrigerator and in the process knocked a hole in your kitchen wall. The repair shop won't pay for the damages, so you sue the shop for your loss.
- Someone dents your car but refuses to pay for the damage, so you sue that person.
- Your landlord refuses to make your home or apartment meet housing codes, and you sue for damages, repairs, or lower rent.

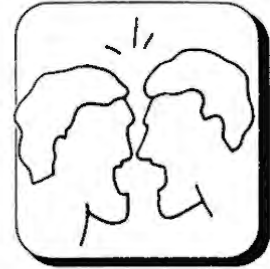


You would be the defendant in these three cases:

- Your landlord tries to evict you from your apartment and collect back rent.
- A finance company sues you for money it claims you owe on a loan.
- A finance company sues you for possession of property, which you used as collateral for a loan.

What You Cannot Do in Small Claims Court

This court is not used for criminal offenses, traffic tickets, or disagreements over child support, among other things. You have to be 18 years old to use Small Claims Court. For more information about age and guardian issues, see "Age" in the Appendix on page 30.

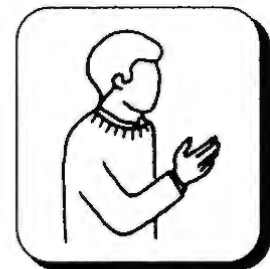


Your Right to an Interpreter

You have the right to an interpreter in Small Claims Court.

Do You Need a Lawyer?

Before you decide to handle your own case in Small Claims Court, you need to think about whether you need a lawyer. If you are facing eviction by your landlord or being sued by a finance company, you may need a lawyer.



If you are a low income person, you may be eligible to get free legal assistance from the Legal Aid office nearest you. You may want to call our Legal Aid Helpline at 866-219-5262 or you may apply for services online at <http://ww2.legalaidnc.org/apply/>

The Costs of Small Claims Court

Suing someone in Small Claims Court costs money. For each lawsuit, the plaintiff must pay a \$96 filing fee to the clerk of court. You pay an additional \$30 fee for each defendant to cover the cost of the sheriff getting the proper legal forms to the defendant. The plaintiff can choose to mail the papers directly to the defendant, as explained in Chapter 2, but this is more difficult and not much cheaper. If you win your case, the court may add these fees to the amount that the defendant is supposed to pay you.

If you cannot afford to pay the fees, you may not have to pay them. You have to fill out a form called "Petition to Sue/Appeal/File Motions as an Indigent" shown referenced below. You get the form from the clerk. You fill out the top part of this form and sign it before a notary public.



If you receive food stamps/SNAP, Temporary Assistance to Needy Families (TANF) or Supplemental income (SSI), the clerk may automatically allow you to bring the lawsuit without paying any fees. If you do not receive any of those benefits, then you may be required to fill out the Civil Affidavit of Indigency form and the Petition to Sue/Appeal/File Motions as an Indigent. The clerk will review these papers to decide whether you can afford to pay the costs.

There can be additional fees if you ask the sheriff's department to enforce the judge's order or want to appeal a judge's ruling. These situations are explained on pages 21 and 27.

STATE OF NORTH CAROLINA		File No. _____
_____ County		In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division
Name Of Plaintiff _____		PETITION TO PROCEED AS AN INDIGENT
VERSUS		
Name Of Defendant _____		
G.S. 1-110; 7A-228		
AFFIDAVIT		
<i>(check one of the four boxes below)</i>		
<input type="checkbox"/> Petition To Assert Claims - As a party in the above entitled action, I affirm that I am financially unable to advance the required costs for the prosecution of the claims I have asserted. Therefore, I now petition the Court for an order allowing me to assert my claims as an indigent. <input type="checkbox"/> I am an inmate in the custody of the Division of Adult Correction and Juvenile Justice. (NOTE TO CLERK: If this block is checked, this Petition must be submitted to a Superior Court Judge for disposition provided on the reverse.)		
<input type="checkbox"/> Petition To File Motions - As a party in the above entitled action, I affirm that I am financially unable to advance the required costs to file a notice of hearing on a motion. Therefore, I now petition the Court for an order allowing me to file my motion as an indigent.		
<input type="checkbox"/> Petition To Appeal - As the individual appellant in the above entitled small claims action, I affirm that I am financially unable to pay the cost for the appeal of this action from small claims to district court. Therefore, I now petition the Court for an order allowing me to appeal this action to district court as an indigent.		
<input type="checkbox"/> Petition To File Expunction Petition - As the petitioner in the above entitled action, I affirm that I am financially unable to advance the required costs to file an expunction petition. Therefore, I now petition the Court for an order allowing me to file my expunction petition as an indigent.		
<i>(check one or more of the boxes below as applicable)</i>		
<input type="checkbox"/> I am presently a recipient of <input type="checkbox"/> Supplemental Nutrition Assistance Program (SNAP/food stamps). <input type="checkbox"/> Temporary Assistance for Needy Families (TANF). <input type="checkbox"/> Supplemental Security Income (SSI).		
<input type="checkbox"/> I am represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons, or I am represented by private counsel working on behalf of such a legal services organization. (Attach a letter from your legal services attorney or have your attorney sign the certificate below.)		
<input type="checkbox"/> Although I am not a recipient of SNAP/food stamps, TANF, or SSI, nor am I represented by legal services, I am financially unable to advance the costs of filing this action or appeal.		
SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Date _____
Date _____	Signature _____	Signature Of Petitioner _____
Title Of Person Authorized To Administer Oaths _____		Name And Address Of Petitioner (type or print) _____
SEAL	Date Commission Expires _____	
CERTIFICATE OF LEGAL SERVICES/PRO BONO REPRESENTATION		
I certify that the above named petitioner is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons or is represented by private counsel working on behalf of or under the auspices of such legal services organization.		
Date _____		Signature _____
Name And Address (type or print) _____		
ORDER		
Based on the Affidavit appearing above, it is ORDERED that:		
<input type="checkbox"/> the petitioner is authorized to assert claims, to appeal, or file notices of hearing or petitions in this action as an indigent.		
<input type="checkbox"/> the petition is denied.		
Date _____	Signature _____	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Judge <input type="checkbox"/> Magistrate (for appeal only)
NOTE TO CLERK: If the petitioner is NOT a recipient of SNAP/food stamps, TANF, SSI or is NOT represented by legal services or a private attorney on behalf of legal services, you may ask for additional financial information to determine whether the petitioner is unable to pay the costs.		
(Over)		
AOC-G-106, Rev. 2/18, © 2018 Administrative Office of the Courts		

(TYPE OR PRINT IN BLACK INK) STATE OF NORTH CAROLINA _____ County		File No. _____ In The General Court Of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division																													
Name Of Applicant _____ Street Number And Street Name, Including Apartment Or Unit Number If Applicable _____ City, State And Zip Code _____ Full Permanent Mailing Address Of Applicant (If Different Than Above) _____ Telephone Number Of Applicant _____ Date Of Birth _____ <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant Full Social Security No. _____ <input type="checkbox"/> Has No Social Security No. _____		<h2 style="margin: 0;">CIVIL AFFIDAVIT OF INDIGENCY</h2> <p style="text-align: right; margin-top: 20px;">G.S. 7A-450 et seq.</p>																													
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Personal Property	(Fair Market Value) \$ _____	(Balance Due) \$ _____																													
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Last Income Tax Filed 20 _____ <input type="checkbox"/> Refund <input type="checkbox"/> Owe	\$ _____	\$ _____																													
Other	\$ _____	\$ _____																													
Total Assets And Liabilities	\$ _____	\$ _____																													
Bond Type _____	Amount \$ _____	By Whom Posted _____																													

NOTE: Read the notice on the reverse side before completing this form.

NOTICE TO PERSONS REQUESTING INDIGENCY OR PARTIAL INDIGENCY DESIGNATION

1. When answering the questions on the Affidavit Of Indigency (*reverse side of this form*), please do not discuss your case with the interviewer. The interviewer can be called as a witness to testify about any statements made in his/her presence. Do not ask the interviewer for any advice or opinion concerning your case.
2. **A designation of indigency relieves your obligation to pay all of the arbitration fee. A designation of partial indigency requires you to pay your appropriate percentage of your pro rata share of the arbitration fee prior to arbitration. Failure to pay the arbitration fee will result in the entry of a civil judgment against you, which will accrue interest at the legal rate set out in G.S. 24-1 from the date of the entry of judgment. Your North Carolina Tax Refund and/or North Carolina Lottery winnings may be taken.**
3. The information you provide may be verified, and your signature below will serve as a release permitting the interviewer to contact your creditors, employers, family members, and others concerning your eligibility for an indigency designation. A false or dishonest answer concerning your financial status could lead to prosecution for perjury. See G.S. 7A-456(a) ("A false material statement made by a person under oath or affirmation in regard to the question of his indigency constitutes a Class I felony.").

Under penalty of perjury, I declare that the information provided on this form is true and correct to the best of my knowledge, and that I am financially unable to pay all or part of the arbitration fees prior to the arbitration. I now request that I be designated indigent or partially indigent. I authorize the Court to contact my creditors, employers, or family members, any government agencies or any other entities listed below concerning my eligibility for such designation.

I further authorize my creditors, employers, or family members, any governmental agencies or any other entities listed below to release financial information concerning my eligibility for such designation upon request of the Court.

Governmental Agencies Or Other Entities Authorized To Be Contacted And/Or To Release Information

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		<i>Date</i>
<i>Date</i>	<i>Signature</i>	<i>Signature Of Applicant</i>
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate		<i>Name Of Applicant (Type Or Print)</i>
<input type="checkbox"/> Notary	<i>Date My Commission Expires</i>	<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
SEAL	<i>County Where Notarized</i>	

Chapter 2

If You Are the Plaintiff— How to File Your Claim

To start a lawsuit, you mail or deliver a complaint and a summons to the Office of the Clerk of Superior Court at a county courthouse. This part of the booklet explains where to sue, which complaint form to use, how to fill in the proper legal forms, how to file the claim, and how to get the forms to the defendant.

Where to Sue

If you are suing someone who lives in your own county, start the lawsuit there. If you are suing someone in a different county, you must start the lawsuit in that county. This means mailing or taking the forms and fees to the clerk of court in the other county.

Your trial will be held in the county where the defendant lives. If you are suing more than one defendant and they live in different counties, pick a county where one of them lives and sue them all in that county. For instance, if one of the defendants lives in your county but another defendant does not, you can sue both defendants in your county.

Choosing A Complaint Form

Before you file your lawsuit, you must fill out a complaint form. The clerk of court has different complaint forms for different kinds of problems. The three most commonly used forms are: *Complaint for Money Owed*, *Complaint to Recover Possession of Personal Property*, and *Complaint in Summary Ejectment* (used by landlords). The Complaint



for Money Owed is described in detail in the next section. The forms described in this booklet can be found at the North Carolina Court System website, www.nccourts.org. If you want to get back some property which is in dispute, you should use the Complaint to Recover Possession of Personal Property <http://www.nccourts.org/Forms/Documents/350.pdf>. On that form, you as the plaintiff must say if you are a "secured party" or not. A secured party is usually a finance company or other institution of some sort rather than an individual. If you have a written statement that you may repossess property if payments are not made according to an agreed upon schedule, then you are a secured party.

Landlords use the Complaint in Summary Ejectment form to collect back rent or evict tenants. This form is fairly complicated to understand both for landlords (the plaintiffs) and tenants (the defendants).



If none of the standard forms suits your exact situation, you may write your own complaint. Be sure to state what your claim is and include the type of information shown on the sample that follows.

How to Fill Out Complaint for Money Owed

A copy of this form is shown on the next page, and the steps to fill out that form are described below.

Step 1. If you are filing the suit, put your correct full name as plaintiff, with your address and telephone number, if any. You must include the name of your county.

Step 2. Put the person's full name being sued as defendant, with the address and telephone number, if any, and the county where the person lives.

If you are suing a business, you must find out if it is a corporation or not. If the business is a corporation, you list the correct name of the corporation as the defendant. Your complaint and summons must go to the "registered agent" of the corporation, or to an officer, director, or managing agent of the corporation. If the business is not a corporation, you list the owners of the business as the defendants.

For more explanation of businesses as defendants, see the Appendix at page 30.

Step 3. List the name and address of your attorney, if you have one. If you don't have an attorney, leave this blank.

Step 4. List the county where you are bringing this lawsuit.

Step 5. After "Principal Amount Owed," put the exact amount of money which you claim the defendant owes you. If you are claiming interest on this money, put that amount on the next line. Add the two figures to get the "Total Amount Owed."

Step 6. In the sample complaint form, note the choices of boxes the plaintiff may use. You can check a box and fill in the information on the line next to the box. Or you can check "other" and describe the purpose of your suit.

Step 7. Sign and date the complaint. If you have a lawyer, he or she may sign it.

<p>File No.</p> <p style="text-align: center;">COMPLAINT FOR MONEY OWED</p> <p style="text-align: right; font-size: small;">G.S. 7A-216, 7A-232</p> <p>Name And Address Of Plaintiff</p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">Step 1</p> <p>County: Telephone No.</p> <p style="text-align: center; font-weight: bold;">VERSUS</p> <p>Name And Address Of Defendant 1 <input type="checkbox"/> Individual <input type="checkbox"/> Corporation</p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">Step 2</p> <p>County: Telephone No.</p> <p>Name And Address Of Defendant 2 <input type="checkbox"/> Individual <input type="checkbox"/> Corporation</p> <p>County: Telephone No.</p> <p>Name And Address Of Plaintiff's Attorney</p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">Step 3</p>	<p style="text-align: center;">STATE OF NORTH CAROLINA</p> <p style="text-align: center; font-size: 18pt; font-weight: bold;">Step 4</p> <p style="text-align: center;">County</p> <p style="text-align: right; font-size: small;">In The General Court Of Justice District Court Division-Small Claims</p> <p>1. The defendant is a resident of the county named above. 2. The defendant owes me the amount listed for the following reason:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Principal Amount Owed</td> <td style="width: 5%;">\$</td> <td style="width: 25%; text-align: center; font-size: 24pt; font-weight: bold;">Step 5</td> </tr> <tr> <td>Interest Owed (if any)</td> <td>\$</td> <td></td> </tr> <tr> <td>Total Amount Owed</td> <td>\$</td> <td></td> </tr> </table> <p style="font-size: small;">(check one below)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td><input type="checkbox"/> On An Account (attach a copy of the account)</td> <td>Date From Which Interest Due</td> <td>Interest Rate</td> </tr> <tr> <td><input type="checkbox"/> For Goods Sold And Delivered Between</td> <td>Beginning Date</td> <td>Ending Date</td> </tr> <tr> <td><input type="checkbox"/> For Money Lent</td> <td>Date From Which Interest Due</td> <td>Interest Rate</td> </tr> <tr> <td><input type="checkbox"/> On a Promissory Note (attach copy)</td> <td>Date Of Note</td> <td>Date From Which Interest Due</td> </tr> <tr> <td><input type="checkbox"/> For a Worthless Check (attach a copy of the check)</td> <td></td> <td></td> </tr> <tr> <td><input type="checkbox"/> For conversion (describe property)</td> <td></td> <td></td> </tr> </table> <p style="text-align: center; font-size: 24pt; font-weight: bold;">Step 6</p> <p>Other: (specify)</p> <p>I demand to recover the total amount listed above, plus interest and reimbursement for court costs.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Date:</td> <td style="width: 40%;">Name Of Plaintiff Or Attorney (Type Or Print)</td> <td style="width: 30%;">Signature Of Plaintiff Or Attorney</td> </tr> </table> <p style="text-align: center; font-size: 24pt; font-weight: bold;">Step 7</p>	Principal Amount Owed	\$	Step 5	Interest Owed (if any)	\$		Total Amount Owed	\$		<input type="checkbox"/> On An Account (attach a copy of the account)	Date From Which Interest Due	Interest Rate	<input type="checkbox"/> For Goods Sold And Delivered Between	Beginning Date	Ending Date	<input type="checkbox"/> For Money Lent	Date From Which Interest Due	Interest Rate	<input type="checkbox"/> On a Promissory Note (attach copy)	Date Of Note	Date From Which Interest Due	<input type="checkbox"/> For a Worthless Check (attach a copy of the check)			<input type="checkbox"/> For conversion (describe property)			Date:	Name Of Plaintiff Or Attorney (Type Or Print)	Signature Of Plaintiff Or Attorney
Principal Amount Owed	\$	Step 5																													
Interest Owed (if any)	\$																														
Total Amount Owed	\$																														
<input type="checkbox"/> On An Account (attach a copy of the account)	Date From Which Interest Due	Interest Rate																													
<input type="checkbox"/> For Goods Sold And Delivered Between	Beginning Date	Ending Date																													
<input type="checkbox"/> For Money Lent	Date From Which Interest Due	Interest Rate																													
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<input type="checkbox"/> For a Worthless Check (attach a copy of the check)																															
<input type="checkbox"/> For conversion (describe property)																															
Date:	Name Of Plaintiff Or Attorney (Type Or Print)	Signature Of Plaintiff Or Attorney																													

(Over)

AOC-CVM-200, Rev. 9/13
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How to Fill Out The Summons and Assignment Card

You must also fill out a summons, which is available from the clerk's office. This notice of the lawsuit goes to each defendant. See the blank summons on the next page. You fill out the top part of the form. Write the county where you are suing, your name as the plaintiff, the name of the defendant, and under "TO:" the name and address of each defendant. If you are suing a corporation, list it as the defendant, and under "TO:" put the name and address of the registered agent, an officer, director, or managing agent of the corporation (for more information, see "Businesses As Defendants" in the Appendix on page 30).



The clerk will fill in the rest of the form, sign it, and set the date and time for the trial. This tells the defendant when to come to court. The date will be no later than 30 days from the day you file your complaint.

The clerk may also ask you to fill out a Notice of Assignment/Service card. Put your name on the back, so that it is like a postcard addressed to yourself. The clerk of court mails this card to you when your case is scheduled. It lets you know when your case will be heard and whether the defendant received the summons and complaint.

How to File the Lawsuit

Make a copy of the complaint and summons for yourself and a copy for each defendant you are suing. Give all the copies to the clerk of court, who stamps the date and time on them. When you file the complaint, you will need to pay the \$96 court cost or file as an indigent, as explained in Chapter 1.

For the filing of the lawsuit to be completed, a copy of the complaint and summons must then be delivered to each defendant. You can have this done through the sheriff's office, or you can do it yourself through a complicated procedure explained in the next section.

If you choose to use the sheriff's office, you must pay a \$30 service fee for each defendant. Sometimes, you pay this \$30 fee directly to the sheriff; sometimes the clerk gives the forms to the sheriff and takes the fee for you. If you filed as an indigent, you do not need to pay the \$30 fee.

FORM—Magistrate Summons

(back of form not shown since it is used only by the sheriff.)

STATE OF NORTH CAROLINA		File No.
_____ County		In The General Court Of Justice District Court Division - Small Claims
Plaintiff(s)	MAGISTRATE SUMMONS	
<input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE)		
VERSUS		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	
Telephone No. Of Defendant 1	Telephone No. Of Defendant 2	
A Small Claim Action Has Been Commenced Against You!		
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 <input type="checkbox"/> AM <input type="checkbox"/> PM	Location Of Court
Name And Address Of Plaintiff Or Plaintiff's Attorney		Date Issued
		Signature
		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

(Over)

When filing by mail, use either a money order or cashier's check. Make separate checks for the \$96 filing fee, to the Clerk of Superior Court, and for the \$30 service fee for each defendant, to the sheriff of that county. *Do not send cash or a personal check.*

Getting the Legal Papers to the Defendant

You can get the complaint and summons to the defendant using the sheriff, the mail, or other means. The sheriff's office is much simpler than other methods. Here's why.

By Sheriff. Often, a clerk will take your papers and your \$30 fee over to the sheriff's office. Sometimes, however, you must take the forms stamped by the clerk from the clerk to the sheriff's office. In either case, keep a copy of the stamped complaint and summons for your records.

STATE OF NORTH CAROLINA		File No.
County _____		
In the General Court of Justice		NOTICE OF ASSIGNMENT/SERVICE
Plaintiff _____	VS.	Defendant _____
<i>For Small Claims Only</i>		
<input type="checkbox"/> The above captioned small claim is assigned to the Magistrate presiding at the place, date and time indicated below		
Location of Court _____	Trial Date _____	Trial Time <input type="checkbox"/> AM <input type="checkbox"/> PM
Signature _____	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> CSC	
Summons Service		
<input type="checkbox"/> The summons in the above captioned action		
<input type="checkbox"/> Was Served	<input type="checkbox"/> Was NOT Served	
Date served _____	Reason	
	<input type="checkbox"/> Unable to locate <input type="checkbox"/> Moved out of county	
<input type="checkbox"/> Other (specify) _____		

AOC-CVM-300
Rev. 2/82

The sheriff's deputy keeps a copy of the summons and fills out the back telling how the complaint and summons were delivered to the defendant. The deputy will then file this information with the clerk of court.

If you use the sheriff, you should receive the assignment card from the clerk telling you whether the defendant received these papers and the date of your trial. If you do not receive the assignment card in several weeks, check with the clerk directly. The case cannot be heard in court if the defendant has not been notified.

By Mail. You may prefer to send the complaint and the summons to the defendant by registered or certified mail, but this is more difficult. You must do this yourself at the post office and ask for it to be sent return receipt requested. Sending these papers by registered or certified mail requires that they are actually delivered or handed to the defendant. You then have to write a statement and get it certified by a notary public that you followed the right steps in this process. Next, you have to file that statement with the clerk of court, along with the post card which the post office mails back to you showing that the defendant got what you mailed. The clerk must get this certified statement from you before completing the Notice of Assignment/Service card.

By Other Means. If you cannot get the complaint and summons to the defendant using these instructions, there are other ways to try to serve the defendant. For instance, you can start over with a new summons form, which you can get from the clerk. Or you can use what's called "service by publication," which is giving notice to a defendant through a newspaper. Service by publication usually costs a lot of money. You may need a lawyer to help you do this.



Chapter 3

If You Are the Defendant - What to Expect

If you are being sued, you will get a copy of the summons and a copy of the complaint from the sheriff or by registered or certified mail. Read both sides of the complaint and summons carefully. These court papers will tell you what the case is about and when you have to be in court. Except in cases involving evictions, you should have received your court papers at least **five days** before the hearing date on the summons. If you do not, then the magistrate should set the hearing date for another date in the future. You may call the magistrate ahead of time about this and ask for a later court date. If you are unable to speak with the magistrate or the magistrate will not give you another court date, then you should still go to the hearing at the date and time set out in the summons. At the hearing, you can ask the magistrate for a new hearing date for this reason.



If you think you will need a lawyer's help to defend your case, talk to one right away. Don't wait until the last minute to contact a lawyer. This is especially important if a landlord is trying to evict you.

If you are a tenant, there are several ways, you can be notified of a proposed eviction. The landlord may mail the complaint and summons to you by certified or registered mail. The sheriff may personally hand—deliver these forms to you; the sheriff may mail these forms to you by regular mail; and/or the sheriff may post these forms on your home. The sheriff is required to do these things at least **two days** before the hearing. The legal papers posted on your door are important! Pay attention to them and see a lawyer or decide immediately what you are going to do.

You may, if you wish, mail a formal answer to the clerk of court about the complaint or take this written answer to court. But you can also just wait and tell your side of the story at the trial.

You may have a complaint against the person who is suing you. If you want to file what's called a counterclaim, you will probably need to contact a lawyer. For more on counterclaims, see the Appendix on page 30.

Chapter 4

How to Prepare for the Trial

Remember:

The "Plaintiff" is the one who is suing someone.

The "Defendant" is the one who is being sued.

If you are the plaintiff, you must prove in court:

- Why the defendant owes you money and the amount owed;
- Why the defendant should return certain property to you, which property should be returned, and in some cases, the value of the property (an issue when the defendant claims that the disputed property is worth more than \$10,000, the highest amount allowed to be settled in this court); and
- If you are the landlord seeking a summary ejectment action, why you are entitled to an order requiring the defendant to move out.

If you are the defendant:

- You try to show that you do not owe the money or should not have to return the property, or that you owe less than the plaintiff says you owe; or
- In a summary ejectment case, you need to show why you should not be required to move out, or that the landlord owes you money because of the landlord's failure to maintain your home in a livable condition.

Steps To Prepare for the Trial



1. *Gather your evidence.* Get together any materials you have that will help you prove your side of the story, including receipts, letters, photos, leases, cancelled checks, contracts, or ledgers. Bring them with you when you come to court.

2. *Witnesses.* Anyone who has first-hand knowledge about the case can be a witness - friends, family members, strangers, even a child. If they can help you prove your side of the story, they can help you in your trial. But they have to come to court to tell the judge themselves about what they saw or know. Be sure and tell your witnesses when and where the case will be heard. If a witness won't come to court, or can't get off work for the trial, you might want to force the witness to come to court by having the sheriff deliver a subpoena to that witness (see Appendix at pages 30-31 for more on subpoenas).



3. *Practice what you are going to say.* Before you go to court, practice. Think about what questions the other side and the judge may ask you in court. Think about how you should answer them. The magistrate may not give you much time to tell your story, so you have to be able to list the most important points briefly and clearly. But be sure you say everything important to your case.

4. *Visit the Court.* If you have time, go to Small Claims Court to see what it's like. This can be especially helpful if you've never been in court. Small Claims Court is much more informal than other courtrooms.

Settling Out of Court

You may decide to settle out of court, whether you are the plaintiff or the defendant. If you do reach such an agreement, get it in writing. You may need a written agreement later if the other party does not follow through.

If you are the defendant, don't settle just to keep from going to court. If you think you don't owe what the plaintiff says you owe, then you should present your case to the magistrate.



If you can reach an agreement with the other side before the court hearing, you do not need to go to the trial. When a case is settled out of court, the plaintiff should notify the clerk of court so that the case is dismissed. If you are the defendant, check with the clerk of court before your trial date to be sure that the plaintiff has really dismissed the case. If the case is settled out of court, the plaintiff will not get back the court costs that were paid, unless the defendant agrees to pay them as part of the settlement.

Check List for Trial

Use this space to make your own list of evidence and witnesses, and to be sure you're ready for trial.

Evidence

- _____
- _____
- _____
- _____

Witnesses

- _____
- _____
- _____
- _____

Chapter 5

The Small Claims Court Trial

Be On Time



Go to court ten minutes early! It is very important not to be late.

Go to court ten minutes early! It is very important not to be late. If you are the plaintiff and not there when the magistrate calls your case, he or she can dismiss the case. If you are the defendant and not there when the magistrate gets to your case, the plaintiff still must prove the case. But the plaintiff will have a much easier job if you aren't there to tell your side of the story.

If you cannot make it to court on the day of your trial, call the magistrate ahead of time and ask for a later court date. The magistrate may or may not give you another court date. *But if you are the plaintiff and don't call and don't show up at court, the magistrate will dismiss your case.* If you are the defendant and don't call or show up, you are likely to lose.*

* [If your case is dismissed "without prejudice" and you still want a hearing, you may either appeal the case to District Court or you will have to start all over, filing new forms and paying the fee again. If your case is just dismissed, it is considered "with prejudice" and cannot be filed again. However, you could still appeal the case to District Court. An explanation of how to appeal the case to District Court is in *Chapter 7, page 27.*]



The Events at the Trial

When it is your turn to speak, tell your story simply and truthfully. Focus on the facts, not your opinion. You should not try to act or sound like a lawyer. Just be yourself. Show the magistrate any evidence you have. After you have testified, your witnesses can testify and you can ask them questions.

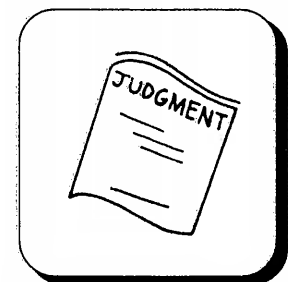
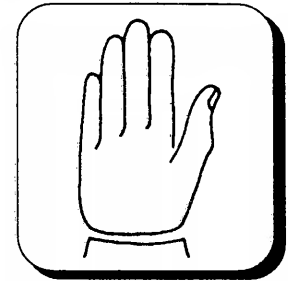
The magistrate or the other side may ask questions of you and of your witnesses. Remember that you and your witnesses only have to answer questions about the facts. You do not have to answer questions about the kind of person you are or anything else that is not an issue in the case. Tell the magistrate if you do not want to answer, and why. It does not help your case to argue with the other side or to talk when others are already speaking. The magistrate will tell you if you must answer a question. Here's the usual order of events at the trial.

- *The Oath.* All those giving evidence or testimony during the trial must swear or affirm that they will tell the truth. This includes plaintiff, defendant, and witnesses. You do not have to swear on a Bible; you can affirm to tell the truth.
- *The Plaintiff's Case.* The magistrate asks the plaintiff to present his or her case first, including any evidence and witnesses. The defendant gets to ask questions of the plaintiff and each of the plaintiff's witnesses after each one testifies.
- *The Defendant's Side.* The defendant then presents that side of the case, with any evidence and witnesses. The plaintiff gets to ask questions of the defendant and each of the defendant's witnesses after each testifies.
- *The Magistrate Reaches a Judgment.* The magistrate reviews the evidence and reaches a decision, which is called a judgment and explained in detail in the next section. No more evidence can be given to the magistrate after the trial.

The Magistrate's Judgment

The magistrate can make a decision at the trial or may wait up to 10 days to issue the judgment. In the judgment, the magistrate may:

- *dismiss the case*, if the plaintiff has not proved the case;
- *order the defendant to pay* either the full amount claimed by the plaintiff or part of that amount, including the plaintiff's filing fees;





- *order the defendant to return property to the plaintiff;*
or
- *in summary ejectment cases, order the defendant to move out and/or pay rent or damages that are due.*

If the magistrate makes a decision which you do not understand, ask the magistrate to explain it to you before you leave the court. Also, you may ask for a copy of the magistrate's decision at that time. If the magistrate makes the judgment during the 10 days after the trial, you can call or go to the clerk of Superior Court later to find out the judgment. Be sure to have the case file number with you.

Landlords and Tenants

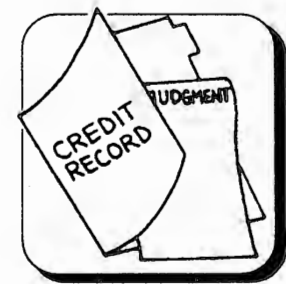
Small Claims Trial Required Before Eviction

For a landlord to evict a tenant legally, *North Carolina law requires that the landlord file an action in Small Claims Court called a "summary ejectment."* The landlord cannot just lock you out of your home or try to force you to move through such actions as cutting off your electricity. If you are a tenant and your landlord is trying to evict you - have you put out of your house or apartment - you have other legal protections and rights which are not covered in this booklet. For more information on evictions, contact the Legal Aid Helpline at 866-219-5262 or apply for services online at <http://ww2.legalaidnc.org/apply/>

Chapter 6

After the Trial

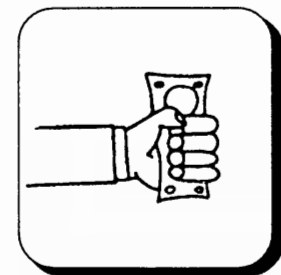
At the end of the trial, or up to 10 days after the trial, the magistrate will sign a written decision called a judgment. The magistrate gives this to the plaintiff, the defendant, and the clerk's office. The clerk files the judgment in the official court records, which are available to the public. These records include the losing person's name, the amount and nature of the judgment, and whether the judgment has been paid. Creditors use these records for credit checks.



The Plaintiff - Getting What is Owed You

If you are the plaintiff and have won your case, the defendant may pay you directly or give the money owed you to the clerk of court, who will then give it to you. The defendant must do this within 10 calendar days after the judgment or appeal to District Court, which is explained in the next chapter (Chapter 7).

If the defendant pays you directly, you must tell the clerk's office and fill out a Certificate of Payment. (See form AOC-CV 413 at <http://www.nccourts.org/Forms/Documents/680.pdf>). The clerk will then note this payment in the official records. Do this within 60 calendar days or the defendant can sue you to make you do this. In such a suit, you pay the defendant's attorney and court costs.



If the defendant has not paid or appealed within the 10-day period, you can have the clerk issue an order to the sheriff called an execution. This gives the sheriff the power to demand payment of your judgment from the defendant. If the defendant does not pay, the sheriff can then seize any cash, vehicles, goods or other property of the defendant, sell them, and use the money to pay the judgment. The sheriff turns over any money collected in this way to the clerk, who notes payment in the official records and gives the money to you.



Property Which the Sheriff Cannot Take— “Exempt” Property

The law lets the defendant keep some property, which is called "exempt" property. **Before** the clerk can issue the execution order, you must get two new forms from the clerk, called Notice of Right to Have Exemptions Designated and Motion to Claim Exempt Property. You must fill out portions of these forms, have the clerk sign the Notice and then have both forms served on the losing party. You can do this using the sheriff or the mail, as you did with the summons and complaint. See Chapter 2, pages 11-12 for more information. Below, we will use "defendant" to mean the losing party to explain the court process to exempt or protect property from being used to pay a judgment.

After receiving these forms, the defendant has 20 calendar days to fill out the Motion to Claim Exempt Property, mail or deliver it to the clerk's office, and send you a copy. If the defendant does not return the form in the 20-day period or returns the form showing there is property to take, you can then ask the clerk to issue the execution to the sheriff. If the defendant returns the form but lists property as exempt that you believe should not have been listed, then you can ask for a hearing before a District Court judge. At that hearing, you and/or the judge can ask the defendant questions about the property listed on the Motion to Claim Exempt Property or any other property which you believe that the defendant may own but did not list on the Motion.

If the defendant denies owning certain property, then you will need to prove that the defendant is wrong. The judge will then make a decision about what property the defendant can keep. After that decision is made, then you can ask the clerk of court to issue the execution to the sheriff.

The clerk's fee for issuing this execution order is \$25. The fee to the sheriff's office for trying to collect the judgment is \$30. Sometimes, the defendant may give the sheriff the money that is owed on the judgment. If the defendant does not pay, then the sheriff will need to find property that can be taken to pay the judgment, then

there will be more costs involved in taking the property and selling it. You will be required to post a bond before the sheriff will take the property and sell it to pay the judgment. You will be paid back these costs from the money collected from the sale of the property.

Do not attempt to take the execution to the other party yourself. Only the sheriff can deliver an execution and collect the money. After an execution is in force, do not accept any money or property from the other party.

The execution papers are good for 90 calendar days. If the sheriff cannot find the defendant to deliver the execution or cannot find property that can be taken to pay the judgment within that 90 day period, then the sheriff will lose the authority to try and collect the judgment for you. After the 90 calendar days, the sheriff will return the papers back to the clerk of court with a written statement about why the papers are being returned. If you still want to try and collect the judgment, then you will need to pay more fees and ask the clerk to issue another execution. There is no limit on the number of executions that the clerk can issue. However, you are required to give the defendant a new Notice of Right to Have Exemptions Designated and Motion to Claim Exempt Property before any new executions are issued.

If The Magistrate Rules Against You

If the magistrate orders you to pay money to the other side, and you decide not to appeal, you can either pay through the clerk of court or directly to the other side. Be sure to get a receipt when you pay, and be sure the clerk marks the judgment as "paid." If you pay the other side, get that party to go to the clerk's office to have the official records marked "paid." The plaintiff must do this within 60 calendar days or you can sue to have it done, with the other side paying your attorney and court fees. To avoid such a problem, it is much safer to pay through the clerk of court.

If the magistrate orders you to return property to the other side, and you decide not to appeal, return the prop-



You must fill out the Motion to Claim Exempt Property, return it to the clerk of court, and send a copy to the plaintiff or plaintiff's attorney within 20 days OR YOU COULD LOSE EVERYTHING YOU OWN!

erty directly to the plaintiff. Be sure to get a receipt from the plaintiff or plaintiff's lawyer when you turn over the property.

Until the judgment is paid in full, the records in the clerk's office will show that the judgment is "outstanding." This could hurt your credit rating.

If You Lose and Can't Afford to Pay

If you get a judgment against you and do not pay it, the other side may ask the sheriff to enforce the judgment. Your car or other property could be sold by the sheriff to satisfy the judgment. However, before any property is taken by the sheriff, you can claim some of your property as "exempt property" - that is, property that is protected from being collected. You may be able to keep your car, house, household property, or other property.

Before your property may be taken to pay a judgment, you must receive a Notice of Right to Have Exemptions Designated and a Motion to Claim Exempt Property. You must fill out the Motion to Claim Exempt Property, return it to the clerk of court, and send a copy to the plaintiff or plaintiff's attorney within 20 calendar days OR YOU COULD LOSE EVERYTHING YOU OWN!

If you do not fill out the form or do not claim property as exempt, the plaintiff can then ask the sheriff to start the execution. The sheriff can then come to your home or place of work to collect the money or seize property to sell in order to pay the judgment.

The sheriff can check at your house from time to time to see if you have gotten any property that is not exempt or given away any that you claimed. For more information on exempt property, contact the Legal Aid Helpline at 866-219-5262 or apply for services online at <http://ww2.legalaidnc.org/apply/>

The sheriff will not put you in jail because you cannot pay the judgment. The judgment stays on your record for at least 10 years or until you pay it.

What Property Can Be Protected:

The exemption law lists different types of property, and sets limits for the value of property that can be exempt. Exemption limits are based on the "equity value" of your interest in each item of property. To determine your equity value in an item, follow these steps:

1. Find out the fair market value of your interest in the item. "Fair market value" means what you could sell the item for (at the flea market, for example). If you co-own the item with someone else, only the fair market value of your share of the property is counted.
2. Find out the amount owed (pay-off) to each creditor who has a security interest in the item.
3. Subtract #2 from #1.

Following is a list of the types of property that can be exempted, with the "equity value" exemption limits for each type of property. The amount listed below are effective January 1, 2006 and apply to judgments filed on or after that date. Exemption amounts may be different for judgments filed before January 1, 2006.

Each debtor can exempt:

- up to \$35,000 in land, house, mobile home or other property used as a residence, or burial plots. (Additional protections may apply to real property or a mobile home owned by married persons and unmarried persons who are 65 years of age or older.)
- up to \$5,000 in any property (this amount is reduced by the amount of exemption claimed for residence or burial plot.)
- up to \$3,500 in one automobile.
- up to \$5,000 in clothes, household furnishings and goods, appliances, books, animals, crops, and musical instruments which are used primarily for personal, family, or household use. (This amount increases \$1,000 for each dependent of the debtor up to a maximum of four (4) dependents.)

- up to \$2,000 in books, tools, or other things you or your dependents use for your work or trade.
- life insurance policies listing a spouse and/or children as beneficiaries.
- items of health care aid you or your dependents need to work or stay healthy.
- money payments for personal injury or for the death of a person upon whom you depend for support (unless the judgment is for services related to personal injury).
- individual retirement accounts, including individual retirement annuities and Roth retirement accounts.
- funds up to \$25,000 in college savings plans under certain conditions.
- other state or governmental retirement accounts.
- alimony, support, separate maintenance, and child support payments necessary for your support.

What Property Is Not Protected?

Exemptions don't apply to the following:

- all of your property, if you fail to claim your exemptions on time!
- the value of property is greater than the exemptions allow.
- personal property bought less than 90 days before the judgment collection starts.
- claims owed to the federal government or its agencies, as allowed by federal law.
- claims of the State or its subdivisions for taxes, appearance bonds, or fiduciary bonds.
- claims for liens placed by law against specific property.
- if a seller takes a security interest in an item you are buying from that seller, the item is not exempt from a judgment for the property.
- orders for child support, alimony, or property distribution related to divorce or alimony.

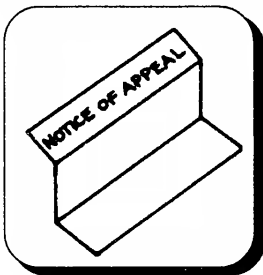
- property owned by debtors who do not reside in North Carolina.
- judgments against corporations.

Tips For Protecting Your Exemption Rights

1. Notify the Clerk of Court and judgment creditor(s) if you change addresses after a judgment is entered. If you cannot be located for personal service by the Sheriff or by certified mail, service of the exemption notice can be made by regular mail to your "last known" address, whether or not you actually receive it.
2. Carefully read all mail and Court notices you receive. Your 20-day time limit for claiming exemptions begins on the day after you are served with the exemption notice.
3. Read and follow the instructions stated on the Motion form. Complete each section of the Motion. Make sure you list all of your property, including your share of property owned with others. You can attach additional pages if necessary. Values should be based on what you reasonably believe you could sell the item for, at a flea market, for example. If an item has no equity value (see page 24), you should list the item with a "\$0" value.
4. Make sure to follow instructions at the end of the Motion for signing, dating, and serving your Motion. One copy of the Motion must be filed with the Court, and a copy must also be sent to the creditor - all within the 20 day time limit.
5. If you need help completing the exemption motion, if you own property in excess of exemption limits, or if the creditor objects to your exemptions, promptly contact an attorney or the Legal Aid Helpline at 866-219-5262.

Chapter 7

Appeals to District Court



After the judgment in Small Claims Court, either side can appeal to get a new trial in District Court. To appeal, you must either tell the magistrate at the trial after the decision is made or file a written Notice of Appeal to District Court form with the clerk within 10 calendar days from the date of the judgment. If you file a written notice, you must mail a copy of it to the other side within 10 calendar days of the judgment. A sample appeals form is below. If you cannot get such a form from the clerk in your county, you may write your own appeal, using this form as a guide.

Cost

To appeal your case you must pay a fee of \$150 to the clerk of court within 20 calendar days after the judgment. If you cannot afford to pay this fee, ask the clerk for the "Petition to Sue/Appeal /File Motions as an Indigent" form and file it within 10 calendar days after the magistrate issues the judgment. (See Chapter 1 for more about this form.)

The clerk, magistrate, or judge will probably decide at the time you file the form whether you have to pay the fee. However, he or she may take up to 20 days after the judgment to decide this. If you don't get a decision right away, you will have to keep checking with the clerk of court throughout this 20-day period to find out if you can appeal as an indigent. If you are not allowed to appeal as an indigent, you must pay your \$150 fee before the 20-day period is up in order for your appeal to go forward in the courts.

FORM—Notice of Appeal to District Court

STATE OF NORTH CAROLINA	File No. _____
_____ County	Judgment Abstract No. _____
In The General Court Of Justice District Court Division - Small Claims	
Name Of Plaintiff _____	NOTICE OF APPEAL TO DISTRICT COURT
VERSUS	
Name Of First Defendant _____	
Name Of Second Defendant _____	
G.S. 7A-228, 7A-230	

TO THE CLERK OF SUPERIOR COURT:

As the plaintiff defendant in the above-captioned action, I hereby give written Notice of Appeal on the judgment entered. This Notice is given within ten (10) days after the date the judgment in this action was entered.

I certify that today I have served copies of this Notice to all parties involved in this action.

I understand that I must pay to the Clerk of Superior Court the court costs for appeal within twenty (20) days after the magistrate rendered judgment (ten (10) days in summary ejectment cases), unless I am authorized to appeal as an indigent, or my appeal will be dismissed. If I am the defendant, I also understand that in certain cases if I wish to stay execution of the judgment, I may be required to sign a bond and that the plaintiff may have an execution issued after ten (10) days if I have not signed the required bond.

Also, I demand that this Appeal be tried before a judge. jury.

Date Of Entry Of Judgment	Date Of Appeal	Date Costs Paid	Amount Of Court Costs Paid
			\$
Name Of Appealing Party 1	Signature Of Appealing Party 1	Name Of Appealing Party 2 (if applicable)	Signature Of Appealing Party 2 (if applicable)

NOTICE TO THE APPEALING PARTY**NOTICE OF APPEAL**

If you did not give Notice of Appeal to the magistrate in open court at the time the judgment was rendered, you may file this written Notice of Appeal with the clerk within ten (10) days after the judgment is entered. You have a right to request a trial by jury. If you do not ask for a jury trial, you will be given a trial by a judge without a jury. You must mail or deliver copies of this form to all of the other parties. If you mail them before filing this form with the Clerk, check the block in the body of the form indicating you have served the parties and fill out the back of the original of this form. If you mail copies after filing this form with the Clerk, you must file a separate certification of service with the Clerk. You must file an answer to the allegation if the complaint is a violation of G.S. 42-63 (criminal activity). G.S. 42-68(3).

MANDATORY ARBITRATION

Many counties have mandatory arbitration programs in which appeals from small claims court are heard by an arbitrator before they go to a district court trial. You will be notified if your case is assigned for mandatory arbitration and, if so, what you must do.

COURT COSTS

Within ten (10) days after the magistrate's judgment is entered in a summary ejectment case, and within twenty (20) days in all other cases, you MUST PAY to the clerk in cash the court costs for appealing the case, or your appeal will be dismissed. If you cannot afford to pay the appeal costs, you may ask the clerk for the form to appeal as an indigent (AOC-G-106). You must file the form to appeal as an indigent within ten (10) days after the judgment was entered. If the appealing party petitions to qualify as an indigent, and the petition is denied, that party has an additional five (5) days to perfect the appeal by paying the court costs.

STOPPING ENFORCEMENT OF JUDGMENT**Summary ejectment:**

If you are a tenant appealing from a summary ejectment judgment entered against you and you wish to stay on the premises until the appeal is heard, you must SIGN A BOND that you will pay your rent as it becomes due into the Clerk's office; you must PAY IN CASH the amount of rent in arrears as determined by the magistrate; and if the judgment was entered more than five (5) days before the next rental payment is due, you may also have to PAY IN CASH the prorated amount of rent due from the date the judgment was entered until the next rental payment is due. Ask the clerk for the bond form (AOC-CVM-304) to allow you to stay on the premises. If you have not signed this bond and paid the prorated amount of cash within ten (10) days after the judgment was entered, the landlord can ask to have the sheriff remove you from the premises even though the case is being appealed.

Possession of personal property:

If the magistrate's judgment ordered you to return specific personal property to the other party and you wish to continue to hold that property until the appeal is heard, you must sign a bond, signed by at least one surety, that you and the surety will pay any costs and damages if you do not comply with the judgment of the district court. Ask the clerk for the bond form (AOC-CVM-906M). If you have not signed this bond within ten (10) days after the judgment was entered, the other party can ask to have the sheriff take the property from you even though the case is being appealed.

Money judgment:

If a money judgment has been entered against you, you do not need to sign a bond to stop enforcement. The judgment is automatically stayed until the appeal is heard.

(Over)

Waiting for the Appeal To Be Heard

If you appeal a judgment made against you in Small Claims Court, you do not have to pay that judgment until the District Court decides the case. If the judgment requires you to deliver property to the other side, however, you may have to turn the property over, or post bond in order to keep the property during the appeal. Instead of a bond, the clerk might ask you to put up cash or other security to keep the property.

If you are a tenant and want to continue living in your residence while appealing the case, you must sign a statement agreeing to pay your rent to the court during the appeal process. Some of this rent may be due at the time you appeal.

District Court

When a case is appealed by either party, a new trial date is set for District Court. The case is treated as a brand new case that has never been tried before. This means you will have to present your evidence and witnesses again. Either side may ask to have a jury to decide the facts, but this request must be made at the time the Notice of Appeal is filed. If neither side chooses to have a jury, the judge will decide the case. District Court is more formal and cases there take more time. Legal papers that you may want to file are not available as forms from the clerk. Most people find they need a lawyer to take a case to district court. This is especially true if you are a tenant appealing an eviction.



Appendix

Age. A person under age 18 can have a claim filed by a guardian ad litem ("GAL") who has been appointed by a clerk of court. A guardian ad litem must be over 18 and can be a parent, relative or friend. If the person you wish to sue is under age 18 or under any legal disability, such as mental incompetence, you should ask a lawyer for help.

Businesses as Defendants. If you are suing a business, you must first find out whether it is a corporation or not. To find this out, along with the name and address of the corporation's registered agent, call the N.C. Secretary of State, Corporations Division (919) 814-5400 (or visit its website, <https://www.sosnc.gov/corporations/thepage.aspx>). If the business is a corporation, the Corporation Division will tell you the county, city, and street address of the corporation's registered office and principal place of business, which could be in different counties. You may sue this corporation in any county where it does business.

If there is no record of that business as a corporation, then go to the Register of Deeds office in the county where the business has its main office. The Register of Deeds, which is in the courthouse, has the names of owners of businesses in its county. Write the business owner's name on the court papers as the defendant. If the Register of Deeds office does not have information about the owners or their addresses or about any registered office, you may sue the business in any county where it does business.

Counterclaims. If you are the defendant and have a claim against the person who sues you, you can sue that person as part of

the same case. You do this by filing a "counterclaim," also in Small Claims Court. For example, an appliance store may be suing for a repair bill you didn't pay. But you don't want to pay because the repairman knocked a hole in your wall, which you paid to have repaired. You want the appliance company to pay for that damage before you pay its repair bill. Your counterclaim cannot be more than \$10,000, and you should check with the clerk to find out the maximum amount you can ask for in the counterclaim.

To file a counterclaim, you need to write an answer to the complaint you get. Write what your claim is and your answer to what the plaintiff says under the heading "Answer and Counterclaim." Take the written answer and counterclaim to the clerk of court on or before the day of your trial and pay a \$96 filing fee or complete the Petition to Sue as Indigent Form. See Chapter 1, page 3. Include with the answer and counterclaim a signed statement of how you will give these papers to the defendant, which you can do in person or by regular mail. All of this must be done before the time set for the trial.

If you are the defendant and have filed a counterclaim against the plaintiff, the magistrate may order the plaintiff to pay part or all of your claim, or may order the property returned to you.

If you win your counterclaim you can collect on it the same way that the plaintiff collects on a judgment, as discussed in Chapter 6.

Subpoena. If a person cannot get time off from work to come to court or is unwilling to come, you can get a subpoena from the clerk of court. This is a legal notice, which requires the witness to come to court. You will have to pay a \$30 fee for the sheriff to deliver the subpoena to the wit-

ness. Each witness who is subpoenaed can collect a small daily fee and, if the witness is from outside the county, travel expenses from the court, after the judgment is collected.

These fees are then added to the court costs, which are paid by the person who loses, if the judgment is collected.

Suits Over \$10,000. The limit of \$10,000 on suits in Small Claims Court does not include interest or court fees. If you have a claim over \$10,000 or the maximum amount allowable in a Small Claims lawsuit, you can:

1. File your claim in District Court, where you will probably need a lawyer to represent you; or

2. You can lower your claim to the maximum amount for Small Claims lawsuits and file it in Small Claims Court.

Wrong Person is Sued. If you are being sued and think someone else is at fault in the case, you can use a legal procedure to have this person appear in court as another party to the lawsuit. This person is called a "third party defendant." In a situation like this, you will need a lawyer to be sure that your rights are protected.

Legal Aid of North Carolina, Inc.

If you need legal assistance, call **866-219-5262**,
or apply online at

<http://ww2.legalaidnc.org/apply>

LANC has offices in the following locations:

Legal Aid of NC – Ahoskie

Counties Served (11): Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Northampton, Pasquotank, Perquimans

Legal Aid of NC – Gastonia

Counties Served (3): Cleveland, Gaston, Lincoln

Legal Aid of NC – Pembroke

Counties Served (3): Hoke, Robeson, Scotland

Legal Aid of NC – Asheville

Counties Served (6): Buncombe, Henderson, Madison, Polk, Rutherford, Transylvania

Legal Aid of NC – Goldsboro

Counties Served (3): Greene, Lenoir, Wayne

Legal Aid of NC – Raleigh

Counties Served (2): Johnston, Wake

Legal Aid of NC – Boone

Counties Served (7): Alleghany, Ashe, Avery, Mitchell, Watauga, Wilkes, Yancey

Legal Aid of NC – Greensboro

Counties Served (6): Davidson, Guilford, Montgomery, Randolph, Rockingham, Rowan

Legal Aid of NC – Sylva

Counties Served (8): Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain & Qualla Indian Boundaries

Legal Aid of NC – Charlotte

Counties Served (1): Mecklenburg

Legal Aid of NC – Greenville

Counties Served (10): Beaufort, Carteret, Craven, Hyde, Jones, Martin, Pamlico, Pitt, Tyrell, Washington

Legal Aid of NC – Wilmington

Counties Served (7): Bladen, Brunswick, Columbus, Duplin, New Hanover, Onslow, Pender

Legal Aid of NC – Concord

Counties Served (3): Cabarrus, Stanly, Union

Legal Aid of NC – Hayesville

Counties Served (5): Clay, Cherokee, Graham, Jackson, Macon

Legal Aid of NC – Wilson

Counties Served (6): Edgecombe, Greene, Lenoir, Nash, Wayne, Wilson

Legal Aid of NC – Durham

Counties Served (7): Caswell, Durham, Franklin, Granville, Person, Vance, Warren

Legal Aid of NC – Morganton

Counties Served (9): Alexander, Avery, Burke, Caldwell, Catawba, McDowell, Mitchell, Watauga, Yancey

Legal Aid of NC – Winston-Salem

Counties Served (9): Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Wilkes, Yadkin

Legal Aid of NC – Fayetteville

Counties Served (3): Cumberland, Harnett, Sampson

Legal Aid of NC – Pittsboro

Counties Served (7): Alamance, Anson, Chatham, Lee, Moore, Orange, Rockingham



Legal Services Corporation provides funding to Legal Aid of NC.

REQUEST FOR SPOKEN FOREIGN LANGUAGE COURT INTERPRETER

The Judicial Department provides spoken foreign language court interpreters at state expense for all Limited English Proficient (LEP) parties in interest in most court proceedings, child custody mediation, child planning conferences, and out-of-court communications on behalf of public defenders, assigned/appointed counsel, district attorneys and the GAL Program. **Note: Public Defenders, Assigned Counsel, District Attorney or GAL: For out-of-court communication with the LEP individual on a date other than the court date, submit this form only for LOTS services. For out-of-court Spanish language needs, contact a Spanish court interpreter directly from the Registry.**

A request for an interpreter must be submitted to the language access coordinator (LAC) in the county in which the case will be heard. When you select the county in the box below, this form automatically will be sent to the LAC for that county.

Please fill out this form completely, and click the "Submit" button at the bottom of the page to send your request via email. Once the email is created, you must click "Send" to submit your request. You will receive a confirmation email to acknowledge your successful submission of the form. If you do not receive a confirmation email within 24 hours, please contact the LAC for the county. You may contact the LAC at <CountyName>.Interpreter@nccourts.org. For example, to contact the Wake County LAC, send an email to Wake.Interpreter@nccourts.org. For New Hanover county, send an email to NewHanover.Interpreter@nccourts.org. **You should submit a new request form for each court date for which an interpreter is needed. Please fill out this form using Adobe Reader or Internet Explorer.**

Requestor Last Name		Requestor First Name		Middle Initial
Requestor Title (Select from List)		Phone No.	Email	
Language (select from list) (Select from List)		County (select from list) (Select from List)		
Date of Service (MM/DD/YYYY)		Courtroom No.	Select an hour, quarter hour and time of day 00 : 00 AM/PM	
Estimated Duration (select from list) (Select from List)		Comments Regarding Duration		
Physical Address of Courthouse or Location Where Interpreter is to Appear				
Last Name / Surname of LEP Person		First Name of LEP Person		Middle Initial
Last Name / Surname of LEP Person		First Name of LEP Person		Middle Initial
LEP Party is (select all that apply)				
Defendant / Respondent		Witness		Respondent Parent(s)
Petitioner / Plaintiff		Victim		Parent / Guardian of Juvenile Juvenile or Minor Child
Last Name of Prosecuting Attorney or Attorney for Petitioner/Plaintiff		First Name of Prosecuting Attorney or Attorney for Petitioner/Plaintiff		Middle Initial
Phone No.		Email		
Last Name of Attorney for Defendant/Respondent		First Name of Attorney for Defendant/Respondent		Middle Initial
Phone No.		Email		
Enter at least one File No.(s)		Type of Case (select from list) (Select from List)		
Case Name		Type of Proceeding (select from list) (Select from List)		Jurisdiction (select from list) (Select from List)
VS.				
Interpreter is Requested to Provide Services (select all In-Court / Out-of-Court services that apply)				
In-Court		Court Proceeding		Custody Mediation Session or Orientation
				Child Planning Conference
Out-Of-Court		District Attorney		Public Defender
		Assigned Counsel		GAL Program
Additional Information				
FOR OFFICE USE ONLY:				
Added to Spreadsheet Date		Interpreter Contacted Date		Interpreter Confirmed Date
Date of Request	Assignment Sent to Interpreter Date	Confirmation Sent to Requestor Date	Case(s) Resolved Date	

Submit



Language Access Complaint Form

Complaints or concerns about language access services?

Submit your complaint or concern here.

The North Carolina Judicial Department is committed to removing barriers that prohibit equal access to justice by individuals with limited English proficiency. To that end, a language access officer has been appointed to receive and address concerns about language access services in the North Carolina state courts.

If you have complaints or concerns about language access services that have been provided to you, or if you have concerns about language access policies and practices within our courts, report your concerns here. Provide appropriate contact information so that we can contact you for additional information if necessary, properly investigate your complaint and respond to you.

The language access officer will address your concerns and attempt to resolve any outstanding language access issues within 30 days of submission of this form.

NOTE: Complete this form only if you have a formal complaint or concern about language access services. If you have general questions, contact the Office of Language Access Services at (919) 890-1407 or send an email to OLAS@nccourts.org.

Contact Information:

First Name:	Required	<input type="text"/>
Last Name:	Required	<input type="text"/>
Address Line 1:		<input type="text"/>
Address Line 2:		<input type="text"/>
City:		<input type="text"/>
State:		<input type="text"/>
Zip Code:		<input type="text"/>
Phone Number:		<input type="text"/>
Email Address:	Required	<input type="text"/>

Information on Incident or Concern:

Date of Incident or Concern:	Required	<input type="text"/>
In what county were you conducting business?	Required	- Select One - ▾
	Required	

—
If you have a citation # related to this incident, enter it here:

If you have a case # related to this incident, enter it here:

Please describe what happened with your interaction with the court below:

Required

If you would like to print this form, do so now, **before you click the "Submit" button.**

Once you press submit, an acknowledgement of the information on this form will be sent to the email address provided.

Clear



Submit

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff
VERSUS
Name Of Defendant

PETITION TO PROCEED AS AN INDIGENT

G.S. 1-110; 7A-228

AFFIDAVIT

(check one of the four boxes below)

- Petition To Assert Claims - As a party in the above entitled action, I affirm that I am financially unable to advance the required costs for the prosecution of the claims I have asserted.
Petition To File Motions - As a party in the above entitled action, I affirm that I am financially unable to advance the required costs to file a notice of hearing on a motion.
Petition To Appeal - As the individual appellant in the above entitled small claims action, I affirm that I am financially unable to pay the cost for the appeal of this action from small claims to district court.
Petition To File Expunction Petition - As the petitioner in the above entitled action, I affirm that I am financially unable to advance the required costs to file an expunction petition.

(check one or more of the boxes below as applicable)

- I am presently a recipient of Supplemental Nutrition Assistance Program (SNAP/food stamps), Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI).
I am represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons, or I am represented by private counsel working on behalf of such a legal services organization.
Although I am not a recipient of SNAP/food stamps, TANF, or SSI, nor am I represented by legal services, I am financially unable to advance the costs of filing this action or appeal.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date
Signature Of Petitioner

Date
Signature

Title Of Person Authorized To Administer Oaths

Name And Address Of Petitioner (type or print)

SEAL
Date Commission Expires

CERTIFICATE OF LEGAL SERVICES/PRO BONO REPRESENTATION

I certify that the above named petitioner is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons or is represented by private counsel working on behalf of or under the auspices of such legal services organization.

Date
Signature

Name And Address (type or print)

ORDER

Based on the Affidavit appearing above, it is ORDERED that:

- the petitioner is authorized to assert claims, to appeal, or file notices of hearing or petitions in this action as an indigent.
the petition is denied.

Date
Signature
Assistant CSC
Clerk Of Superior Court
Judge
Magistrate (for appeal only)

NOTE TO CLERK: If the petitioner is NOT a recipient of SNAP/food stamps, TANF, SSI or is NOT represented by legal services or a private attorney on behalf of legal services, you may ask for additional financial information to determine whether the petitioner is unable to pay the costs.

ORDER - DACJJ INMATES

The undersigned superior court judge of this district finds that the petitioner is an inmate in the custody of the Division of Adult Correction and Juvenile Justice and that the complaint

- is not frivolous.
- is frivolous.

It is ORDERED that

- the petitioner is authorized to sue in this action as an indigent.
- the petitioner is not authorized to sue as an indigent.
- the action is dismissed.

Date	Name Of Superior Court Judge (type or print)	Signature Of Superior Court Judge
------	--	-----------------------------------

CERTIFICATION

I certify that this Petition has been served on the party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date	Signature	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
------	-----------	---

NOTE: G.S. 1-110(b) provides: "The clerk of superior court shall serve a copy of the order of dismissal upon the prison inmate."

(TYPE OR PRINT IN BLACK INK)
STATE OF NORTH CAROLINA

File No. _____

_____ County

In The General Court Of Justice
 District Superior Court Division

Name Of Applicant _____

Street Number And Street Name, Including Apartment Or Unit Number If Applicable _____

City, State And Zip Code _____

Full Permanent Mailing Address Of Applicant (If Different Than Above) _____

Telephone Number Of Applicant _____ Date Of Birth _____

Plaintiff Defendant

Full Social Security No. _____ Has No Social Security No.

CIVIL AFFIDAVIT OF INDIGENCY

G.S. 7A-450 et seq.

MONTHLY INCOME (money you make)		MONTHLY EXPENSES (money you pay out)	
Employment - Applicant	\$ _____	Number Of Dependents	_____
Name And Address Of Applicant's Employer <i>(If not employed, state reason; if self-employed, state trade)</i>		Shelter <input type="checkbox"/> Buying <input type="checkbox"/> Renting	\$ _____
Other Income (Welfare, Food Stamps, S/S, Pensions, etc.)	\$ _____	Food (including Food Stamps)	\$ _____
Employment - Spouse	\$ _____	Utilities <i>(power, water, heating, phone, cable, etc.)</i>	\$ _____
Name And Address Of Spouse's Employer		Health Care	\$ _____
		Installment Payments <input type="checkbox"/> Vehicle <input type="checkbox"/> Other	\$ _____
		Car Expenses <i>(gas, insurance, etc.)</i>	\$ _____
		Support Payments	\$ _____
		Other: <i>(specify)</i>	\$ _____
Total Monthly Income	\$ _____	Total Monthly Expenses	\$ _____

DESCRIPTION OF ASSETS AND LIABILITIES	ASSETS (things you own)	LIABILITIES (amounts you owe)
Cash On Hand And In Bank Accounts <i>(List Name Of Bank & Account No.)</i>	\$ _____	
Money Owed To Or Held For Applicant	\$ _____	
Motor Vehicles <i>(List Make, Model, Year)</i>	<i>(Fair Market Value)</i>	<i>(Balance Due)</i>
	\$ _____	\$ _____
Real Estate	<i>(Fair Market Value)</i>	<i>(Balance Due)</i>
	\$ _____	\$ _____
Personal Property	<i>(Fair Market Value)</i>	<i>(Balance Due)</i>
	\$ _____	\$ _____
Other Debts		\$ _____
Last Income Tax Filed 20 _____ <input type="checkbox"/> Refund <input type="checkbox"/> Owe	\$ _____	\$ _____
Other	\$ _____	\$ _____
Total Assets And Liabilities	\$ _____	\$ _____
Bond Type	Amount \$ _____	By Whom Posted

NOTE: Read the notice on the reverse side before completing this form.

NOTICE TO PERSONS REQUESTING INDIGENCY OR PARTIAL INDIGENCY DESIGNATION

1. When answering the questions on the Affidavit Of Indigency (*reverse side of this form*), please do not discuss your case with the interviewer. The interviewer can be called as a witness to testify about any statements made in his/her presence. Do not ask the interviewer for any advice or opinion concerning your case.
2. **A designation of indigency relieves your obligation to pay all of the arbitration fee. A designation of partial indigency requires you to pay your appropriate percentage of your pro rata share of the arbitration fee prior to arbitration. Failure to pay the arbitration fee will result in the entry of a civil judgment against you, which will accrue interest at the legal rate set out in G.S. 24-1 from the date of the entry of judgment. Your North Carolina Tax Refund and/or North Carolina Lottery winnings may be taken.**
3. The information you provide may be verified, and your signature below will serve as a release permitting the interviewer to contact your creditors, employers, family members, and others concerning your eligibility for an indigency designation. A false or dishonest answer concerning your financial status could lead to prosecution for perjury. See G.S. 7A-456(a) ("A false material statement made by a person under oath or affirmation in regard to the question of his indigency constitutes a Class I felony.").

Under penalty of perjury, I declare that the information provided on this form is true and correct to the best of my knowledge, and that I am financially unable to pay all or part of the arbitration fees prior to the arbitration. I now request that I be designated indigent or partially indigent. I authorize the Court to contact my creditors, employers, or family members, any government agencies or any other entities listed below concerning my eligibility for such designation.

I further authorize my creditors, employers, or family members, any governmental agencies or any other entities listed below to release financial information concerning my eligibility for such designation upon request of the Court.

Governmental Agencies Or Other Entities Authorized To Be Contacted And/Or To Release Information

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		<i>Date</i>
<i>Date</i>	<i>Signature</i>	<i>Signature Of Applicant</i>
<input type="checkbox"/> <i>Deputy CSC</i> <input type="checkbox"/> <i>Assistant CSC</i> <input type="checkbox"/> <i>Clerk Of Superior Court</i> <input type="checkbox"/> <i>Magistrate</i>		<i>Name Of Applicant (Type Or Print)</i>
<input type="checkbox"/> <i>Notary</i>	<i>Date My Commission Expires</i>	<input type="checkbox"/> <i>Plaintiff</i> <input type="checkbox"/> <i>Defendant</i>
SEAL	<i>County Where Notarized</i>	

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division - Small Claims

Plaintiff(s)

MAGISTRATE SUMMONS **ALIAS AND PLURIES SUMMONS (ASSESS FEE)****VERSUS**

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

Telephone No. Of Defendant 1

Telephone No. Of Defendant 2

A Small Claim Action Has Been Commenced Against You!

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

 AM PM

Location Of Court

Name And Address Of Plaintiff Or Plaintiff's Attorney

Date Issued

Signature

 Deputy CSC Assistant CSC Clerk Of Superior Court

(Over)

RETURN OF SERVICE

I certify that this summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- 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.
- 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)

Other manner of service (*specify*)

Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- 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.
- 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)

Other manner of service (*specify*)

Defendant WAS NOT served for the following reason:

FOR USE IN SUMMARY EJECTMENT CASES ONLY:	<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:	
	<i>Date Served</i>	<i>Name(s) Of The Defendant(s) Served By Posting</i>
	<i>Address Of Premises Where Posted</i>	

<i>Service Fee</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Deputy Sheriff Making Return (type or print)</i>
<i>Date Of Return</i>	<i>County Of Deputy Sheriff Making Return</i>

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.
2. The defendant owes me the amount listed for the following reason:

G.S. 7A-216, 7A-232

Name And Address Of Plaintiff

Principal Amount Owed	\$
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
Name And Address Of Defendant 1	<input type="checkbox"/> Individual <input type="checkbox"/> Corporation	<input type="checkbox"/> For Money Lent	Date From Which Interest Due	Interest Rate
		<input type="checkbox"/> On a Promissory Note (attach copy)	Date Of Note	Date From Which Interest Due
		<input type="checkbox"/> For a Worthless Check (attach a copy of the check)		
County	Telephone No.	<input type="checkbox"/> For conversion (describe property)		
Name And Address Of Defendant 2	<input type="checkbox"/> Individual <input type="checkbox"/> Corporation			
		Other: (specify)		
County	Telephone No.			
Name And Address Of Plaintiff's Attorney				
I demand to recover the total amount listed above, plus interest and reimbursement for court costs.				
Date	Name Of Plaintiff Or Attorney (Type Or Print)	Signature Of Plaintiff Or Attorney		

(Over)

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.
2. The PLAINTIFF cannot sue in small claims court for more than \$10,000.00. This amount may be lower, depending on local judicial order. If the amount is lower, it may be any amount between \$5,000.00 and \$10,000.00, as determined by the chief district court judge of the judicial district.
3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.
4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.
5. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is entered in favor of the plaintiff, court costs may be charged against the defendant.
6. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.
7. Whether or not an answer is filed, the PLAINTIFF must appear before the magistrate.
8. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is rendered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is rendered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is rendered.
9. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.
10. **The Clerk or magistrate cannot advise you about your case or assist you in completing this form. If you have any questions, you should consult an attorney.**

File No.

STATE OF NORTH CAROLINA

In The General Court Of Justice
District Court Division - Small Claims

_____ County

COMPLAINT TO RECOVER POSSESSION OF PERSONAL PROPERTY

- PLAINTIFF A SECURED PARTY
- PLAINTIFF NOT A SECURED PARTY

G.S. 7A-232; 25-9-609

Name And Address Of Plaintiff

WHEN PLAINTIFF IS A SECURED PARTY

The defendant is a resident of the county named above. I have a security interest in the personal property described in the attached security agreement. The total current value of this property is as shown below. The defendant has defaulted in the payment of the debt which the property secures or has otherwise breached the terms of the security agreement giving me the right to claim immediate possession of the property described below. I demand recovery of this property and reimbursement for court costs.

Description Of Personal Property In Which You Have A Secured Interest (attach copy of security agreement)

Total Value Of Property
To Be Recovered

\$

Date

Signature Of Plaintiff Or Attorney

County

Telephone No.

VERSUS

Name And Address Of Defendant 1 Individual Corporation

WHEN PLAINTIFF IS NOT A SECURED PARTY

The defendant is a resident of the county named above. The defendant has in his/her possession the personal property described below which belongs to me. I am entitled to immediate possession of the property, but the defendant has refused on demand to deliver it to me. The defendant has unlawfully kept possession of this property since the date listed below and has therefore deprived me of its use. The damage due me for the loss of use and physical damage to the property is set out below. I demand recovery of this property and damages in the total amount set out below, plus interest and reimbursement for court costs.

Description Of Personal Property You Own Which Is In Possession Of Defendant

Total Value Of Property
To Be Recovered

\$

County

Telephone No.

Name And Address Of Defendant 2 Individual Corporation

County

Telephone No.

Name And Address Of Plaintiff's Attorney

Date Defendant Wrongfully Took Or Kept Property

Damage Due For Loss Of Use  \$

Physical Damage To Property  \$

Total Amount Of Damages  \$

Attorney Bar No.

Date

Name Of Plaintiff Or Attorney (type or print)

Signature Of Plaintiff Or Attorney

Original - File Copy - Each Defendant Copy - Attorney/Plaintiff
(Over)

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

**THE CLERK OR MAGISTRATE CANNOT ADVISE YOU ABOUT YOUR CASE OR ASSIST YOU IN COMPLETING THIS FORM.
IF YOU HAVE ANY QUESTIONS, YOU SHOULD CONSULT AN ATTORNEY.**

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.
2. The PLAINTIFF cannot sue in small claims court to recover property worth more than \$10,000.00. This amount may be lower, depending on local judicial order. If the amount is lower, it may be any amount between \$5,000.00 and \$10,000.00, as determined by the chief district court judge of the judicial district.
3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.
4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.
5. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is rendered in favor of the plaintiff, court costs may be charged against the defendant.
6. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.
7. Whether or not an answer is filed, the PLAINTIFF must appear before the magistrate.
8. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is entered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is entered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is entered. A defendant who appeals also must post a bond to stay execution of the judgment within ten (10) days after the judgment is entered.
9. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.

STATE OF NORTH CAROLINA

File No.

Judgment Abstract No.

_____ County

In The General Court Of Justice
District Court Division - Small Claims

Name Of Plaintiff

VERSUS

Name Of First Defendant

Name Of Second Defendant

NOTICE OF APPEAL TO DISTRICT COURT

G.S. 7A-228, 7A-230

TO THE CLERK OF SUPERIOR COURT:

As the plaintiff defendant in the above-captioned action, I hereby give written Notice of Appeal on the judgment entered. This Notice is given within ten (10) days after the date the judgment in this action was entered.

I certify that today I have served copies of this Notice to all parties involved in this action.

I understand that I must pay to the Clerk of Superior Court the court costs for appeal within twenty (20) days after the magistrate rendered judgment (ten (10) days in summary ejection cases), unless I am authorized to appeal as an indigent, or my appeal will be dismissed. If I am the defendant, I also understand that in certain cases if I wish to stay execution of the judgment, I may be required to sign a bond and that the plaintiff may have an execution issued after ten (10) days if I have not signed the required bond.

Also, I demand that this Appeal be tried before a judge. jury.

Date Of Entry Of Judgment

Date Of Appeal

Date Costs Paid

Amount Of Court Costs Paid

\$

Name Of Appealing Party 1

Signature Of Appealing Party 1

Name Of Appealing Party 2 (if applicable)

Signature Of Appealing Party 2 (if applicable)

NOTICE TO THE APPEALING PARTY

NOTICE OF APPEAL

If you did not give Notice of Appeal to the magistrate in open court at the time the judgment was rendered, you may file this written Notice of Appeal with the clerk within ten (10) days after the judgment is entered. You have a right to request a trial by jury. If you do not ask for a jury trial, you will be given a trial by a judge without a jury. You must mail or deliver copies of this form to all of the other parties. If you mail them before filing this form with the Clerk, check the block in the body of the form indicating you have served the parties and fill out the back of the original of this form. If you mail copies after filing this form with the Clerk, you must file a separate certification of service with the Clerk. You must file an answer to the allegation if the complaint is a violation of G.S. 42-63 (criminal activity). G.S. 42-68(3).

MANDATORY ARBITRATION

Many counties have mandatory arbitration programs in which appeals from small claims court are heard by an arbitrator before they go to a district court trial. You will be notified if your case is assigned for mandatory arbitration and, if so, what you must do.

COURT COSTS

Within ten (10) days after the magistrate's judgment is entered in a summary ejection case, and within twenty (20) days in all other cases, you MUST PAY to the clerk in cash the court costs for appealing the case, or your appeal will be dismissed. If you cannot afford to pay the appeal costs, you may ask the clerk for the form to appeal as an indigent (AOC-G-106). You must file the form to appeal as an indigent within ten (10) days after the judgment was entered. If the appealing party petitions to qualify as an indigent, and the petition is denied, that party has an additional five (5) days to perfect the appeal by paying the court costs.

STOPPING ENFORCEMENT OF JUDGMENT

Summary ejection:

If you are a tenant appealing from a summary ejection judgment entered against you and you wish to stay on the premises until the appeal is heard, you must SIGN A BOND that you will pay your rent as it becomes due into the Clerk's office; you must PAY IN CASH the amount of rent in arrears as determined by the magistrate; and if the judgment was entered more than five (5) days before the next rental payment is due, you may also have to PAY IN CASH the prorated amount of rent due from the date the judgment was entered until the next rental payment is due. Ask the clerk for the bond form (AOC-CVM-304) to allow you to stay on the premises. If you have not signed this bond and paid the prorated amount of cash within ten (10) days after the judgment was entered, the landlord can ask to have the sheriff remove you from the premises even though the case is being appealed.

Possession of personal property:

If the magistrate's judgment ordered you to return specific personal property to the other party and you wish to continue to hold that property until the appeal is heard, you must sign a bond, signed by at least one surety, that you and the surety will pay any costs and damages if you do not comply with the judgment of the district court. Ask the clerk for the bond form (AOC-CVM-906M). If you have not signed this bond within ten (10) days after the judgment was entered, the other party can ask to have the sheriff take the property from you even though the case is being appealed.

Money judgment:

If a money judgment has been entered against you, you do not need to sign a bond to stop enforcement. The judgment is automatically stayed until the appeal is heard.

(Over)

NOTICE TO PARTY NOT APPEALING

If the appealing party has not asked for a jury trial and you wish to have a jury rather than a judge without a jury try your case, you must file a written request for a trial by jury with the clerk within ten (10) days after receiving this Notice and, within the same amount of time, you must mail copies of your written request to the other parties. See section on Mandatory Arbitration on Side One of this form.

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was served by

- depositing a copy enclosed in a postpaid, properly-addressed envelope in a post office or official depository under the exclusive care and custody of the U.S. Postal Service directed to the
 - defendant. defendant's attorney.
 - plaintiff. plaintiff's attorney.
- delivering a copy personally to the
 - defendant. defendant's attorney.
 - plaintiff. plaintiff's attorney.
- leaving a copy at the
 - defendant's attorney's office with a partner or employee.
 - plaintiff's attorney's office with a partner or employee.
- Other:

<i>Date Mailed/Delivered</i>	<i>Signature Of Person Serving Notice Of Appeal</i>
<i>Name And Address Of Person To Whom Mailed/Delivered</i>	<i>Name Of Person Serving Notice Of Appeal (type or print)</i>
	<i>Title</i>
	<i>Name And Mailing Address Of Appealing Party 1</i>
	<i>Name And Mailing Address Of Appealing Party 2 (if applicable)</i>

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice

_____ County

Name And Address Of Plaintiff

SERVICEMEMBERS CIVIL RELIEF ACT AFFIDAVIT

VERSUS

Name And Address Of Defendant

50 U.S.C. 3901 to 4043

NOTE: Though this form may be used in a Chapter 45 Foreclosure action, it is not a substitute for the certification that may be required by G.S. 45-21.12A.

AFFIDAVIT

I, the undersigned Affiant, under penalty of perjury declare the following to be true:

1. As of the current date: (check one of the following)

- a. I have personal knowledge that the defendant named above is in military service.*
b. I have personal knowledge that the defendant named above is not in military service.*
c. I am unable to determine whether the defendant named above is in military service.*

2. (check one of the following)

- a. I used the Servicemembers Civil Relief Act Website (https://scra.dmdc.osd.mil/) to determine the defendant's military status.
b. I have not used the Servicemembers Civil Relief Act Website and the following facts support my statement as to the defendant's military service: (State how you know the defendant is not in the military. Be specific.)

*NOTE: The term "military service" includes the following: active duty service as a member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; service as a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency; active service as a commissioned officer of the Public Health Service or of the National Oceanic and Atmospheric Administration; any period of service during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. 50 U.S.C. 3911(2).

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature Of Affiant

Signature Of Person Authorized To Administer Oaths

Name Of Affiant (type or print)

- Deputy CSC Assistant CSC Clerk Of Superior Court Magistrate

SEAL

Notary

Date My Commission Expires

NOTE TO COURT: Do not proceed to enter judgment in a non-criminal case in which the defendant has not made an appearance until a Servicemembers Civil Relief Act affidavit (whether on this form or not) has been filed, and if it appears that the defendant is in military service, do not proceed to enter judgment until such time that you have appointed an attorney to represent him or her.

(Over)

Information About Servicemembers Civil Relief Act Affidavits

1. Plaintiff to file affidavit

In any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

- (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
- (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

50 U.S.C. 3931(b)(1).

2. Appointment of attorney to represent defendant in military service

If in a civil action or proceeding in which the defendant does not make an appearance it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed to represent a service member cannot locate the service member, actions by the attorney in the case shall not waive any defense of the service member or otherwise bind the service member. 50 U.S.C. 3931(b)(2).

State funds are not available to pay attorneys appointed pursuant to the Servicemembers Civil Relief Act. To comply with the federal Violence Against Women Act and in consideration of G.S. 50B-2(a), 50C-2(b), and 50D-2(b), plaintiffs in Chapter 50B, Chapter 50C, and Chapter 50D proceedings should not be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. Plaintiffs in other types of actions and proceedings may be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. The allowance or disallowance of the ordering of costs will require a case-specific analysis.

3. Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act. 50 U.S.C. 3931(b)(3).

4. Satisfaction of requirement for affidavit

The requirement for an affidavit above may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury. 50 U.S.C. 3931(b)(4). The presiding judicial official will determine whether the submitted affidavit is sufficient.

5. Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under 50 U.S.C. 3931(b) (or a statement, declaration, verification, or certificate as authorized under 50 U.S.C. 3931(b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both. 50 U.S.C. 3931(c).

This booklet applies to statutes and forms current as of August 2018. Since laws apply differently in different situations and may change from time to time, you should consult a lawyer for special advice on your case. Some counties may still be using old forms which differ from some of the ones in this booklet, or may be using an earlier version of this booklet.

This booklet should be available in every county, at the office of the Clerk of Superior Court. Be aware, however, that the people who work in these offices cannot help you fill out any forms or give any legal advice. It is against the law for them to do this.

We appreciate the help of the following attorneys, all familiar with Small Claims Court: Bill Rowe of the NC Justice Center, and Celia Pistolis of Legal Aid of North Carolina, Inc. They reviewed this version of the booklet to assure publication of the most current information.

Special thanks go to the Administrative Office of the Courts and its director, whose support made possible the distribution of this booklet to the offices of the Clerk of Superior Court throughout the state.

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