

How to File a Civil Lawsuit

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INTRODUCTION

This guide explains the basic steps and practice tips in filing a civil lawsuit in North Carolina state court. Lawsuits are commenced with the delivery of a summons and complaint to the Clerk of Court. Although filing a lawsuit is uniform throughout North Carolina, the procedures in one county might vary slightly from another. It is best, therefore, to consult the Clerk of Court in the county where the lawsuit will be filed with questions.

Standard Civil Litigation Procedures Understanding the Process

Trial courts in North Carolina are separated into two divisions: the Superior Court Division and District Court Division. **Superior Courts** have jurisdiction over civil cases involving **more than \$25,000**. **District Courts** have jurisdiction over civil cases involving **less than \$25,000 and all family law matters such as divorce, custody and child support cases**. N.C. Gen. Stat. § 7A-243, *et seq.*

Small claims court is a part of the District Court Division. Magistrate judges preside over small claims actions, which generally involve civil actions in which the amount in controversy is **less than \$10,000**. The principal relief sought in small claims court is money owed or summary ejectment. Legal Aid of North Carolina maintains a guide for filing small claims court actions on its website, found here: www.legalaidnc.org/get-help/Documents/guide-to-small-claims-court.pdf.

What & Where to File

The following items must be submitted to the Clerk of Court: **(i) complaint; (ii) summons; (iii) cover sheet; and (iv) filing fee.**

Venue is prescribed by statute. In civil actions, **venue is typically the county in which the plaintiff or defendant resides**. N.C. Gen. Stat. §1-82. Procedure for filing a small claim action may be found in N.C. Gen. Stat. § 7A-213. Venue statutes should be consulted prior to filing any lawsuit. See *generally* N.C. Gen. Stat. § 1-76, *et seq.*

The physical location and contact information for each county courthouse and Clerk of Court can be found here: www.nccourts.org/County/Default.asp.

Preparing the Complaint

What must be included in the complaint?

Rule 8(a) of the Rules of Civil Procedure describes basic pleading requirements. Generally, a complaint must set forth a **statement of the claims against the defendant** with **sufficient detail** to give the court and defendant notice of the transactions at issue. The complaint must also include a **demand for judgment for the relief sought**.

Rule 9 of the Rules of Civil Procedure describes pleading requirements for special matters, including capacity, fraud, defamation and medical malpractice claims. Claims based on specific statutory causes of action may also have unique pleading requirements.

Is a particular form or style required?

Rule 10 of the Rules of Civil Procedure provides the form of the complaint (and of all pleadings). Exhibits may be adopted by reference and attached to the complaint. It is best to separately identify exhibits with "A, B, C," etc. or "1, 2, 3," etc. See *also* N.C. Gen. Stat. § 7A-216.

The form of the **caption generally used** is below:

NORTH CAROLINA	IN THE GENERAL COURT OF	
COUNTY NAME	JUSTICE SUPERIOR [OR DISTRICT]	
	COURT DIVISION 15 CVS _____	
PLAINTIFF NAME,)	
Plaintiff,)	
v.)	
DEFENDANT(S) NAME(S),)	COMPLAINT
Defendant.)	
_____)	

Who signs the complaint?

The **attorney for the plaintiff** must date and sign the complaint, by which an attorney is making certain representations pursuant to Rule 11 of the Rules of Civil Procedure. Although the client may sign or verify the complaint, **client verification is not required** in the usual case.

The form of the **signature line** is below:

/s/
NAME OF PLAINTIFF'S ATTORNEY
N.C. State Bar No. _____
Attorney for _____
PLAINTIFF'S ATTORNEY'S CONTACT
INFORMATION, INCLUDING EMAIL

Preparing the Summons & Cover Sheet

How do I complete the summons?

A summons is available in the Clerk's office and here:
www.nccourts.org/Forms/Documents/204.pdf.

The plaintiff's attorney completes most of the first page of the summons. The Clerk of Court completes the issuance date. The Clerk also "issues" and signs the summons. The Clerk does not file the summons with the complaint, but instead issues it to the plaintiff's attorney or to the sheriff for service.

What is a cover sheet?

A civil action cover sheet is a form that must be **completed and filed by the plaintiff's attorney along with the complaint**. The form is available in the Clerk's office and here:
www.nccourts.org/Forms/Documents/304.pdf.

The Filing Fee

All lawsuits require a filing fee. The fee differs in Superior Court and District Court. The filing fee must be remitted to the Clerk at the same time the complaint is presented for filing. Filing fees are generally listed in N.C. Gen. Stat. § 7A-305. A list of filing fees as of October 1, 2015, can be found here:
www.nccourts.org/Courts/Trial/Documents/court_costs_chart-Oct2015-civil.pdf.

Filing the Lawsuit

After the paperwork is completed, the lawsuit is ready for filing. **Present the summons, complaint, cover sheet and filing fee to the Clerk of Court.** The Clerk will file stamp the cover sheet and complaint and retain the originals to be filed. It is common to have several copies of the complaint; the Clerk will file stamp all copies and return the copies to the attorney.

The Clerk will issue and sign — but not file — the summons. Again, it is common to have several copies issued. In prior years, some Clerks required the original summons to be presented on white paper and the copies on yellow paper. This may be a preferred practice in some counties, but is no longer required.

Notifying the Defendant(s)

The summons and complaint must be served on each defendant. Rule 4 of the Rules of Civil Procedure prescribes methods of service. The **most common ways to serve summons and complaint** are by **registered or certified mail, return receipt requested**, or by **delivering a copy to the sheriff's office for service**. See also N.C. Gen. Stat. § 7A-217.

If service is via registered or certified mail, the postal service will send you a return receipt once the summons and complaint have been delivered to the defendant. This return receipt is commonly referred to as the "green card." When you receive the green card back from the postal service, it is best to file an Affidavit of Service, attaching the green card and original summons noting the date of delivery by the postal service.

If service is by the sheriff, you will be charged a service fee of \$30.00 for each defendant to be served. This fee is paid directly to the sheriff (not the Clerk of Court). The sheriff's office will need the original summons and a copy to be served with the complaint. Once a sheriff's deputy serves a copy of the summons and complaint on the defendant, the deputy will complete the back of the original summons explaining the method and date of service. The deputy will then file the original summons with the Clerk of Court.

APPLICABLE STATUTES

- N.C. Gen. Stat. § 1-76, *et seq.* | Venue for specific actions
- N.C. Gen. Stat. § 1-82 | Venue for typical cases
- N.C. Gen. Stat. § 1A-1, Rule 4(j) | Methods of service
- N.C. Gen. Stat. § 1A-1, Rule 8(a) | Basic pleading requirements
- N.C. Gen. Stat. § 1A-1, Rule 9 | Pleading requirements for special matters
- N.C. Gen. Stat. § 1A-1, Rule 10 | General format for all pleadings
- N.C. Gen. Stat. § 1A-1, Rule 11 | Signing and verification of pleadings
- N.C. Gen. Stat. § 7A-213 | Where to file civil lawsuit
- N.C. Gen. Stat. § 7A-216 | Form of complaint
- N.C. Gen. Stat. § 7A-243, *et seq.* | Jurisdiction over civil cases – Superior Court vs. District Court
- N.C. Gen. Stat. § 7A-305 | Filing fees

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STEP-BY-STEP SUMMARY

Step 1: Determine the amount in controversy. (More than \$25,000 – Superior Court; Less than \$25,000 – District Court)

Step 2: Determine where the claim is to be filed (typically the county where the plaintiff or defendant resides).

Step 3: Prepare the summons, complaint and cover sheet, and submit along with the filing fee to the Clerk of Court.

Step 4: Notify the defendant(s) of the lawsuit by serving them with the summons and complaint.