

TAKE-1

SMALL CLAIMS COURT

XVIII AIRBORNE CORPS LEGAL ASSISTANCE OFFICE



SMALL CLAIMS COURT

1. Q. WHAT ARE THE IMPORTANT LEGAL TERMS I NEED TO KNOW?

- **Plaintiff** -- the party filing the lawsuit
- **Defendant** -- the party being sued by the plaintiff
- **Complaint** -- a document stating the legal dispute between the plaintiff and the defendant. This is also
 - called a "claim" or a "cause of action"
- **Summons** -- a document given or "served" on the defendants to notify them that they are being sued

2. Q. WHAT ARE THE REQUIREMENTS FOR FILING A COMPLAINT IN THE CUMBERLAND COUNTY SMALL CLAIMS COURT?

A. The amount of money or the value of the property over which the plaintiff is suing cannot be greater than \$3,000, and at least one of the defendants must be a resident of the county where the suit is filed.

Small Claims Court has a money limit of \$4,000. Any claim above this amount must be handled in District Court, and you would need to consult an attorney. Defendants must be sued in the county where they reside or are located, even if that county is different from the county where the plaintiff lives.

3. Q. WHAT TYPE OF COMPLAINTS DOES SMALL CLAIMS COURT HANDLE?

A. Small Claims Court can resolve three types of complaints:

- a. **Summary Ejectment** - when you want to evict (remove) someone from your property. For example, if a tenant falls behind on his or her rent payments, the landlord may choose to evict that person.
- b. **Money Owed** - when you want to recover money you already paid someone or when you want to collect money someone owes you. For example, if you believe that your landlord has illegally withheld your security deposit, you can file a claim for money owed to you. If your mechanic does not properly repair your car, you can file a claim to recover the cost of your repairs.
- c. **Personal Property** - when you want to recover personal property that someone is wrongfully holding. For example, if you loaned your lawnmower to someone who refuses to return it, you can file a claim to recover your property.

4. Q. HOW DO I FILE A COMPLAINT IN CUMBERLAND COUNTY SMALL CLAIMS COURT?

A. Begin by going to Room 107 of the Cumberland County Courthouse located at 117 Dick Street, downtown Fayetteville. The clerk will give you one of the three types of complaint forms described above, a summons, and an instruction sheet. In filling out your complaint, you must provide the defendant's full name and address. You can use the defendant's work address but not a P. O. Box. For each small claims action you file, you must complete both a complaint and a summons. Carefully read and follow the clerk's instruction sheet.

5. Q. HOW DO I SUE A BUSINESS?

A. If you are suing a business, first find out if it is a corporation or not. If the business is a corporation, you should list the correct name of the corporation as the defendant and sue both the corporation and the individual owners. 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 it is not a corporation, you should list the owners of the business as the defendants.

6. Q. HOW DO I FIND OUT IF MY DEFENDANT IS A CORPORATION?

A. Call the North Carolina Secretary of State, Corporations Division, (919) 733-4201. If the business is a corporation, the Corporations Division will tell you the county, city, and street address of the corporation's registered agent and principal place of business, which may be in different counties. You may sue the corporation in either county. If there is no record of the corporation's registered agent or principal place of business, you may sue the 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 agent, you may sue the business in any county where it does business.

7. Q. HOW MUCH ARE THE COURT FEES FOR SMALL CLAIMS COURT?

A. The plaintiff must pay a \$34.00 fee for each complaint filed. This fee is paid to the Clerk of Court. The court will only accept cash, money orders, or business checks -- no personal checks. You must also pay a \$5.00 fee for each defendant you sue to cover the cost of the sheriff getting the proper legal forms to the defendant. This fee is paid at the Sheriff's Department. The complaint fee must be paid separately from the sheriff's fee. If you are paying with a business check or by money order, you will need to provide two separate checks or money orders. Once a case is filed, there is no refund of fees. However, if you win your case, the Magistrate will most likely order the losing party to pay your court costs. These are the initial costs of filing your claim. If you have to issue any other paperwork pertaining to your case, (for example, writs, executions, or rights), there will be additional court fees.

8. Q. IF I AM NOT SATISFIED WITH THE MAGISTRATE'S RULING, HOW CAN I APPEAL?

A. After judgment is given in Small Claims Court, both the plaintiff and the defendant have the right to appeal the Magistrate's decision. An appeal allows either side to get a new trial in District Court. This means you will have to present your evidence and witnesses again. District Court is more formal and takes more time than Small Claims Court. Because the legal papers that you need to file in District are not available as forms from the clerk, you will probably need to hire an attorney. The appealing party has ten days from the date of the Magistrate's judgment in which to file the appeal. The fee to appeal is \$50.00.

9. Q. IF THE JUDGE RULES IN MY FAVOR, HOW DO I COLLECT MY JUDGMENT?

A. The losing party has ten days from the date of the judge's ruling in which to pay the judgment. The losing party can pay the winning party directly or through the clerk of the court. If the losing party has not paid or appealed within the ten-day period, the winning party can enforce his or her claim as follows:

1. If you have received a judgment for possession of real or personal property, then you can enforce its collection by asking the court to issue a Writ of Possession. With a Writ of Possession, the sheriff will help you legally reclaim your property.
2. If you received a money judgment, then you can enforce its collection by asking the court to issue a Notice of Rights. This puts the losing party on notice that he or she has 20 days to pay your judgment or to file a Motion to Claim Property which cannot be levied against. This is a form that allows the defendant to protect some of his or her property from being seized by the sheriff and sold to pay your judgment.

You must wait 20 days from the date of service of the Notice of Rights before you can ask the court to issue an order called an Execution. The Execution gives the sheriff the power to demand payment of your judgment from the losing party. If the losing party does not pay, the sheriff can then seize any cash, vehicles, goods or other property of the losing party, 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 of the court and gives the money to you.

HOW TO PRESENT YOUR CASE IN SMALL CLAIMS COURT

- STEP ONE: How Small Claims Court can help you.

You may not need a lawyer for Small Claims Court. Small Claims Court is intended as a "People's Court," easily available to everyone. The other side may or may not have a lawyer. It is your decision on whether or not you want to hire a civilian attorney to represent you in Small Claims Court.

- STEP TWO: Gathering your evidence for trial.

The only way a plaintiff can win his or her case at trial is to present evidence to the judge which proves that the facts in the complaint are true and that the law is in his or her favor. Evidence includes testimony, written documents, material objects, and similar items. Examples of evidence include bills, receipts, photographs, contracts, deeds or titles, checks, eye witness testimony, sworn statements from witnesses, estimates from disinterested persons, etc. If you no longer have a receipt, you can call your bank to get a copy of the check you used to pay the bill. If you paid cash, you may be able to get a copy of the receipt from the business which billed you.

Examples:

1. If you are suing someone for damaging your car, you can prove the extent of the damage to your car by
 - a) Taking a picture of the damaged portion of the car,
 - b) Getting your car repaired and showing the judge a copy of the receipt from the repair company showing how much you had to pay to get the car fixed, or
 - c) If the car has not been repaired, getting an estimate from a repair company.
2. If you are suing your landlord for illegally withholding your security deposit, you would probably need to show the judge a copy of your lease, a copy of the letter you wrote to your landlord giving your landlord notice that you were moving, and photographs of the house showing the condition you left it in when you moved.
3. If you are suing to recover money you already paid to someone, you must have a receipt or a cancelled check showing that you paid the money.

· STEP THREE: Preparing for trial.

- A. Be able to state the important facts of your case clearly and briefly. Stick to the facts, not your opinions.
- B. Type or write out a chronology of the important events of your case.
- C. Bring all your evidence to trial - have the original and copies of all documents.
- D. Appearance is important; dress well and look neat. It is not necessary to wear a suit, but look respectable.
- E. When speaking to the judge, call him or her "sir" or "ma'am," or "Your Honor."
- F. During the trial, never raise your voice to the judge and never interrupt the judge or the other party.
- G. If you do not understand a question that the judge has asked you, tell the judge you do not understand and ask him or her to explain it.
- H. The judge is there to decide your case. The judge cannot give you legal advice.

· STEP FOUR: Be on time.

The clerk will tell you the time and date of your hearing. Arrive at the courthouse at least 15 minutes early. It is very important not to be late. If you are the plaintiff and not there when the judge calls your case, the judge can dismiss your case. If you are the defendant and not there when the judge calls your case, the plaintiff still has to prove his or her case, but this will be much easier since you are not there to tell your side of the story.

If you cannot make it to court on the day of your trial, call the judge's office ahead of time and ask for a later court date. The judge may or may not give you another court date, but if you are the plaintiff and do not call and do not appear for court, the judge will dismiss your case. If your case is dismissed and you still want a hearing, you will have to start again, filing new forms and paying the fees. If you are the defendant and do not call or appear, you are likely to lose your case and will probably have to pay the plaintiff's court costs.

· STEP FIVE: What happens at trial.

The judge will call the hearing to order, swear in both sides, and ask the parties to state their names for the record. The judge will ask the plaintiff to begin by stating the facts of his or her complaint. When the plaintiff is finished, the judge will ask the defendant to respond. The defendant will then present his or her own evidence to challenge or disprove what the plaintiff has stated. When it is your turn to speak, tell your story simply and truthfully. Focus on the facts, not your opinion. Do not try to sound like a lawyer; just be yourself. Show the judge any evidence you have. After you have testified, your witnesses can testify, and you can ask them questions. The judge or the other side is allowed to ask questions of you and of your witnesses.

· STEP SIX: The judge's ruling.

The judge will make a decision after he or she has heard the testimony and seen the evidence presented by both the plaintiff and the defendant. The judge can rule in any of the following ways:

1. Dismiss the case if the plaintiff fails to prove his or her case. This means that the court does not order the defendant to do anything that the plaintiff asked of the court;
2. Enter a judgment against the defendant for the full amount claimed by the plaintiff or part of that amount, including the plaintiff's court costs;
3. Order the defendant to return property to the plaintiff; or
4. In summary ejectment cases, order the defendant to vacate the premises and/or pay rent or damages that are due.