

Article 19.

Small Claim Actions in District Court.

§ 7A-210. Small claim action defined.

For purposes of this Article a small claim action is a civil action wherein:

- (1) The amount in controversy, computed in accordance with G.S. 7A-243, does not exceed ten thousand dollars (\$10,000); and
- (2) The only principal relief prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing in properly joined claims; and
- (3) The plaintiff has requested assignment to a magistrate in the manner provided in this Article.

The seeking of the ancillary remedy of claim and delivery or an order from the clerk of superior court for the relinquishment of property subject to a lien pursuant to G.S. 44A-4(a) does not prevent an action otherwise qualifying as a small claim under this Article from so qualifying. (1965, c. 310, s. 1; 1973, c. 1267, s. 1; 1979, c. 144, s. 1; 1981, c. 555, s. 1; 1985, c. 329; c. 655, s. 1; 1989, c. 311, s. 1; 1993, c. 107, s. 1; c. 553, s. 73(a); 1999-411, s. 1; 2004-128, s. 1; 2013-159, s. 1.)

§ 7A-211. Small claim actions assignable to magistrates.

In the interest of speedy and convenient determination, the chief district judge may, in his or her discretion, by specific order or general rule, assign to any magistrate of the district any small claim action pending in the district if the defendant is a resident of the county in which the magistrate was appointed. If there is more than one defendant, at least one of them must be a bona fide resident of the county in which the magistrate was appointed. (1965, c. 310, s. 1, 1967, c. 1165; 2022-47, s. 5(g).)

§ 7A-211.1. Actions to enforce motor vehicle mechanic and storage liens.

Notwithstanding the provisions of G.S. 7A-210(2) and 7A-211, the chief district judge may in the chief district judge's discretion, by specific order or general rule, assign to any magistrate of the district actions to enforce motor vehicle mechanic and storage liens arising under G.S. 44A-2(d) or 20-77(d) when the claim arose in the county in which the magistrate was appointed. The defendant may be subjected to the jurisdiction of the court over his or her person by the methods provided in G.S. 7A-217 or 1A-1, Rules 4(j) and 4(j1), Rules of Civil Procedure. (1977, c. 86, s. 1; 1979, c. 602, s. 1; 2000-185, s. 1; 2022-47, s. 5(h).)

§ 7A-212. Judgment of magistrate in civil action improperly assigned or not assigned.

No judgment of the district court rendered by a magistrate in a civil action assigned to him by the chief district judge is void, voidable, or irregular for the reason that the action is not one properly assignable to the magistrate under this article. The sole remedy for improper assignment is appeal for trial de novo before a district judge in the manner provided in this article. No judgment rendered by a magistrate in a civil action is valid when the action was not assigned to him by the chief district judge. (1965, c. 310, s. 1.)

§ 7A-213. Procedure for commencement of action; request for and notice of assignment.

The plaintiff files his complaint in a small claim action in the office of the clerk of superior court of the county wherein the defendant, or one of the defendants resides. The designation "Small Claim" on the face of the complaint is a request for assignment. If, pursuant to order or rule, the

action is assigned to a magistrate, the clerk issues a magistrate summons substantially in the form prescribed in this Article as soon as practicable after the assignment is made. The issuance of a magistrate summons commences the action. After service of the magistrate summons on the defendant, the clerk gives written notice of the assignment to the plaintiff. The notice of assignment identifies the action, designates the magistrate to whom assignment is made, and specifies the time, date and place of trial. By any convenient means the clerk notifies the magistrate of the assignment and the setting. (1965, c. 310, s. 1; 1969, c. 1190, s. 19; 1971, c. 377, s. 9.)

§ 7A-214. Time within which trial is set.

The time for trial of a small claim action is set not later than 30 days after the action is commenced. Except in an action demanding summary ejectment, if the time set for trial is earlier than five days after service of the magistrate summons, the magistrate shall order a continuance. By consent of all parties the time for trial may be changed from the time set. For good cause shown, the magistrate to whom the action is assigned may grant continuances from time to time. (1965, c. 310, s. 1; 2009-359, s. 1.)

§ 7A-215. Procedure upon nonassignment of small claim action.

Failure of the chief district judge to assign a claim within five days after filing of a complaint requesting its assignment constitutes nonassignment. The chief district judge may sooner order nonassignment. Upon nonassignment, the clerk immediately issues summons in the manner and form provided for commencement of civil actions generally, whereupon process is served, return made, and pleadings are required to be filed in the manner provided for civil actions generally. Upon issuing civil summons, the clerk gives written notice of nonassignment to the plaintiff. The plaintiff within five days after notice of nonassignment, and the defendant before or with the filing of his answer, may request a jury trial. Failure within the times so limited to request a jury trial constitutes a waiver of the right thereto. Upon the joining of issue, the clerk places the action upon the civil issue docket for trial in the district court division. (1965, c. 310, s. 1.)

§ 7A-216. Form of complaint.

The complaint in a small claim action shall be in writing, signed by the party or his attorney, except the complaint in an action for summary ejectment may be signed by an agent for the plaintiff. It need be in no particular form, but is sufficient if in a form which enables a person of common understanding to know what is meant. In any event, the forms prescribed in this Article are sufficient under this requirement, and are intended to indicate the simplicity and brevity of statement contemplated. Demurrers and motions to challenge the legal and formal sufficiency of a complaint in an assigned small claim action shall not be used. But at any time after its filing, the clerk, the chief district judge, or the magistrate to whom such an action is assigned may, on oral or written ex parte motion of the defendant, or on his own motion, order the plaintiff to perfect the statement of his claim before proceeding to its determination, and shall grant extensions of time to plead and continuances of trial pending any perfecting of statement ordered. (1965, c. 310, s. 1; 1971, c. 377, s. 10.)

§ 7A-217. Methods of subjecting person of defendant to jurisdiction.

When by order or rule a small claim action is assigned to a magistrate, the court may obtain jurisdiction over the person of the defendant by the following methods:

- (1) By delivering a copy of the summons and of the complaint to the defendant or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. When the defendant is under any legal disability, the defendant may be subjected to personal jurisdiction only by personal service of process in the manner provided by G.S. 1A-1, Rule 4(j)(2).
- (2) When the defendant is not under any legal disability, the defendant may be served by registered or certified mail, signature confirmation, or designated delivery service as provided in G.S. 1A-1, Rule 4(j). Proof of service is as provided in G.S. 1A-1, Rule 4(j2).
- (3) When the defendant is under no legal disability, the defendant may be subjected to the jurisdiction of the court over the person of the defendant by written acceptance of service or by voluntary appearance.
- (4) In summary ejectment cases only, service as provided in G.S. 42-29 is also authorized. (1965, c. 310, s. 1; 1969, c. 1190, s. 20; 1973, c. 90; 1983, c. 332, s. 3; 2011-332, s. 1.1.)

§ 7A-218. Answer of defendant.

At any time prior to the time set for trial, the defendant may file a written answer admitting or denying all or any of the allegations in the complaint, or pleading new matter in avoidance. No particular form is required, but it is sufficient if in a form to enable a person of common understanding to know the nature of the defense intended. A general denial of all the allegations of the complaint is permissible.

Failure of defendant to file a written answer after being subjected to the jurisdiction of the court over his person constitutes a general denial. (1965, c. 310, s. 1; 1967, c. 691, s. 20.)

§ 7A-219. Certain counterclaims; cross claims; third-party claims not permissible.

No counterclaim, cross claim or third-party claim which would make the amount in controversy exceed the jurisdictional amount established by G.S. 7A-210(1) is permissible in a small claim action assigned to a magistrate. No determination of fact or law in an assigned small claim action estops a party thereto in any subsequent action which, except for this section, might have been asserted under the Code of Civil Procedure as a counterclaim in the small claim action. Notwithstanding G.S. 1A-1, Rule 13, failure by a defendant to file a counterclaim in a small claims action assigned to a magistrate, or failure by a defendant to appeal a judgment in a small claims action to district court, shall not bar such claims in a separate action. (1965, c. 310, s. 1; 1973, c. 1267, s. 2; 1979, c. 144, s. 2; 1981, c. 555, s. 2; 1985, c. 329; 1989, c. 311, s. 2; 1993, c. 553, s. 73(b); 2005-423, s. 9.)

§ 7A-220. No required pleadings other than complaint.

There are no required pleadings in assigned small claim actions other than the complaint. Answers and counterclaims may be filed by the defendant in accordance with G.S. 7A-218 and G.S. 7A-219. Any new matter pleaded in avoidance in the answer is deemed denied or avoided. On appeal from the judgment of the magistrate for trial de novo before a district judge, the judge shall allow appropriate counterclaims, cross claims, third party claims, replies, and answers to cross claims, in accordance with G.S. 1A-1, et seq. (1965, c. 310, s. 1; 1987, c. 628.)

§ 7A-221. Objections to venue and jurisdiction over person.

By motion prior to filing answer, or in the answer, the defendant may object that the venue is improper, or move for change of venue, or object to the jurisdiction of the court over his person. These motions or objections are heard on notice by the chief district judge or a district judge designated by order or rule of the chief district judge. Assignment to the magistrate is suspended pending determination of the objection, and the clerk gives notice of the suspension by any convenient means to the magistrate to whom the action has been assigned. All these objections are waived if not made prior to the date set for trial. If venue is determined to be improper, or is ordered changed, the action is transferred to the district court of the new venue, and is not thereafter assigned to a magistrate, but proceeds as in the case of civil actions generally. (1965, c. 310, s. 1.)

§ 7A-222. General trial practice and procedure.

(a) Trial of a small claim action before a magistrate is without a jury. The rules of evidence applicable in the trial of civil actions generally are observed. At the conclusion of plaintiff's evidence the magistrate may render judgment of dismissal if plaintiff has failed to establish a *prima facie* case. If a judgment of dismissal is not rendered the defendant may introduce evidence. At the conclusion of all the evidence the magistrate may render judgment or may in his discretion reserve judgment for a period not in excess of 10 days, except as provided in subsection (b) of this section.

(b) In a small claim action for summary ejectment, the magistrate shall render judgment on the same day on which the conclusion of all the evidence and submission of legal authorities occurs, unless the parties concur on an extension of additional time for entering the judgment and except for more complex summary ejectment cases, in which event the magistrate shall render judgment within five business days of the hearing. Complex summary ejectment cases include cases brought for criminal activity, breaches other than nonpayment of rent, evictions involving SECTION 8 of the Housing Act of 1937 (42 U.S.C. § 1437f) or public housing tenants, and cases with counterclaims.

(c) Notwithstanding G.S. 84-4, a party in a small claim action shall not be required to obtain legal representation. (1965, c. 310, s. 1; 1971, c. 377, s. 11; 2013-334, s. 1; 2017-143, s. 2(a).)

§ 7A-223. Practice and procedure in small claim actions for summary ejectment.

(a) In any small claim action demanding summary ejectment or past due rent, or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint. If a small claim action demanding summary ejectment is assigned to a magistrate, the practice and procedure prescribed for commencement, form and service of process, assignment, pleadings, and trial in small claim actions generally are observed, except that if the defendant by written answer denies the title of the plaintiff, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the clerk withdraws assignment of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned. The plaintiff, within five days after receipt of the notice, and the defendant, in his answer, may request trial by jury. Failure to request jury trial within the time limited is a waiver of the right to trial by jury.

(b) If either party in a small claim action for summary ejectment moves for a continuance, the magistrate shall render a decision on the motion in accordance with Rule 40(b) of the Rules of

Civil Procedure. The magistrate shall not continue a matter for more than five days or until the next session of small claims court, whichever is longer, without the consent of both parties.

(b1) In any small claim action demanding summary ejectment and monetary damages, and where service of process has been achieved solely by first-class mail and affixing the summons and complaint to the premises pursuant to G.S. 42-29, the plaintiff, or an agent pursuant to subsection (a) of this section, may request that the claim for summary ejectment be severed from the claim for monetary damages. Upon a finding that personal service was not achieved for one or more defendants, the magistrate shall sever the claim for monetary damages and proceed with the claim for summary ejectment. If the magistrate severs the claim for monetary damages, the plaintiff may extend the action in accordance with G.S. 1A-1, Rule 4(d). The judgment of the magistrate in the severed claim for summary ejectment shall not prejudice the claims or defenses of any party in the severed claim for monetary damages.

(c) The Administrative Office of the Courts is directed to develop a form for parties in small claim actions for summary ejectment to inform them of the time line and process in summary ejectment actions. The clerk of superior court shall make the form available to the parties. (1965, c. 310, s. 1; 1967, c. 691, s. 21; 1971, c. 377, s. 12; 2013-334, ss. 2, 6; 2017-143, s. 1.)

§ 7A-224. (Effective until October 1, 2025) Rendition and entry of judgment.

Judgment in a small claim action is rendered in writing and signed by the magistrate, or is rendered electronically by the magistrate. The judgment so rendered is a judgment of the district court, and is recorded and indexed as are judgments of the district and superior court generally. Entry is made as soon as practicable after rendition. (1965, c. 310, s. 1; 1969, c. 1190, s. 21; 2024-47, s. 9(a).)

§ 7A-224. (Effective October 1, 2025) Rendition and entry of judgment.

Judgment in a small claim action is rendered in writing and signed by the magistrate or is rendered electronically by the magistrate. The judgment so rendered is a judgment of the district court, and is recorded and indexed as are judgments of the district and superior court generally. Entry is made as soon as practicable after rendition. (1965, c. 310, s. 1; 1969, c. 1190, s. 21; 2024-47, s. 9(a); 2024-54, s. 2(a).)

§ 7A-225. Lien and execution of judgment.

From the time of docketing, the judgment rendered by a magistrate in a small claim action constitutes a lien and is subject to execution in the manner provided in Chapter 1, Article 28, of the General Statutes. (1965, c. 310, s. 1.)

§ 7A-226. Priority of judgment when appeal taken.

When appeal is taken from a judgment in a small claim action, the lien acquired by docketing merges into any judgment rendered after trial de novo on appeal, continues as a lien from the first docketing, and has priority over any judgment docketed subsequent to the first docketing. (1965, c. 310, s. 1.)

§ 7A-227. Stay of execution on appeal.

Appeal from judgment of a magistrate does not stay execution if the judgment is for recovery of specific property. Such execution may be stayed by order of the clerk of superior court upon petition by the appellant accompanied by undertaking in writing, executed by one or more

sufficient sureties approved by the clerk, to the effect that if judgment be rendered against appellant the sureties will pay the amount thereof with costs awarded against the appellant. Appeal from judgment of a magistrate does stay execution if the judgment is for money damages. This section shall not require any undertaking of appellants in summary ejectment actions other than those imposed by Chapter 42 of the General Statutes. (1965, c. 310, s. 1; 1967, c. 24, s. 1; 1977, c. 844; 1979, c. 820, s. 9.)

§ 7A-228. (Effective until October 1, 2025) New trial before magistrate; appeal for trial de novo; how appeal perfected; oral notice; dismissal.

(a) The chief district court judge may authorize magistrates to hear motions to set aside an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a magistrate. The exercise of the authority of the chief district court judge in allowing magistrates to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or order entered by a magistrate and, if granted, to order a new trial before a magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given orally in open court upon announcement or after a judgment is rendered. If not announced in open court, written notice of appeal must be filed in the office of the clerk of superior court within 10 days after a judgment is rendered. The appeal must be perfected in the manner set out in subsection (b). Upon announcement of the appeal in open court or upon receipt of the written notice of appeal, the appeal shall be noted upon the judgment. If the judgment was mailed to the parties, then the time computations for appeal of such judgment shall be pursuant to G.S. 1A-1, Rule 6.

(b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or (2) by filing notice of appeal in the office of the clerk of superior court within 10 days after a judgment is rendered pursuant to subsection (a), and by serving a copy of the notice of appeal on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to appeal within 10 days after a judgment is rendered in a summary ejectment action, and within 20 days after a judgment is rendered in all other actions, shall result in the automatic dismissal of the appeal. Notwithstanding the foregoing deadlines, if an appealing party petitions to qualify as an indigent for the appeal and is denied, that party shall have an additional five days to perfect the appeal by paying the court costs. The failure to demand a trial by jury in district court by the appealing party before the time to perfect the appeal has expired is a waiver of the right thereto.

(b1) A person desiring to appeal as an indigent shall, within 10 days of a magistrate rendering a judgment, file an affidavit that the person is unable by reason of poverty to pay the costs of appeal. Within 20 days after a judgment is rendered, a superior or district court judge, magistrate, or the clerk of the superior court may authorize a person to appeal to district court as an indigent if the person is unable to pay the costs of appeal. The clerk of superior court shall authorize a person to appeal as an indigent if the person files the required affidavit and meets one or more of the criteria listed in G.S. 1-110. A superior or district court judge, a magistrate, or the clerk of the superior court may authorize a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as an indigent if the person cannot pay the costs of appeal.

The district court may dismiss an appeal and require the person filing the appeal to pay the court costs advanced if the allegations contained in the affidavit are determined to be untrue or if the court is satisfied that the action is frivolous or malicious. If the court dismisses the appeal, the court shall affirm the judgment of the magistrate.

(b2) A superior or district court judge, magistrate, or clerk of superior court authorizing a person to appeal to district court as an indigent pursuant to subsection (b1) of this section shall do at least one of the following:

- (1) Make written findings including (i) all criteria listed in G.S. 1-110 that led to the authorization of the person to appeal to district court as an indigent and (ii) all information or evidence used to determine that one or more criteria in G.S. 1-110 existed.
- (2) Make written findings indicating (i) that the authorization of the person to appeal to district court as an indigent was not based upon criteria listed in G.S. 1-110 and (ii) all information or evidence used to determine that the person would otherwise be authorized to appeal to district court as an indigent.

(c) Whenever such appeal is docketed and is regularly set for trial, and the appellant fails to appear and prosecute his appeal, the presiding judge may have the appellant called and the appeal dismissed; and in such case the judgment of the magistrate shall be affirmed.

(d) When a defendant in a summary ejectment action has given notice of appeal and perfected the appeal in accordance with G.S. 7A-228(b), the plaintiff may serve upon the defendant a motion to dismiss the appeal if the defendant failed to raise a defense orally or in writing in the small claims court and failed to do at least one of the following:

- (1) Repealed by Session Laws 2024-54, s. 3(a), effective October 1, 2024, and applicable to judgments rendered on or after that date.
- (2) File a motion, answer, or counterclaim in the district court.
- (3) Comply with any obligation set forth in the Bond to Stay Execution on Appeal of Summary Ejectment Judgment entered by the court.

The motion to dismiss the appeal shall state that the defendant failed to raise a defense orally or in writing in the small claims court and list any of the deficiencies committed by the defendant, as described in subdivisions (2) and (3) of this subsection, and shall state that the court will decide the motion to dismiss without a hearing if the defendant fails to respond within 10 days of receipt of the motion. The defendant may defeat the motion to dismiss by responding within 10 days of receipt of the motion by doing at least one of the following acts: (i) if the motion is filed alleging a deficiency described in subdivision (2) of this subsection, by filing a responsive motion, answer, or counterclaim and serving the plaintiff with a copy thereof or (ii) if the motion is filed alleging a deficiency described in subdivision (3) of this subsection, by paying the amount due under the bond to stay execution, if any amount is owed by the defendant. If the defendant is not required by law to make any payment under the bond to stay execution, the court shall not use the failure to make a payment as a basis to dismiss the appeal. The court shall review the file, determine whether the motion satisfies the requirements of this subsection, determine whether the defendant has made a sufficient response to defeat the motion, and shall enter an order resolving the matter without a hearing.

(e) Notwithstanding G.S. 84-4, any party in an action appealed for a trial de novo, as provided for in this section, shall not be required to obtain legal representation. (1965, c. 310, s. 1; 1969, c. 1190, s. 22; 1979, 2nd Sess., c. 1328, s. 3; 1981, c. 599, s. 3; 1985, c. 753, ss. 1, 2; 1987, c. 553; 1993, c. 435, s. 2; 1998-120, s. 1; 2013-334, s. 3; 2014-115, s. 19(a); 2017-143, s. 2(b); 2024-47, s. 9(b); 2024-54, s. 3(a).)

§ 7A-228. (Effective October 1, 2025) New trial before magistrate; appeal for trial de novo; how appeal perfected; oral notice; dismissal.

(a) The chief district court judge may authorize magistrates to hear motions to set aside an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a magistrate. The exercise of the authority of the chief district court judge in allowing magistrates to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or order entered by a magistrate and, if granted, to order a new trial before a magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given orally in open court upon announcement or after a judgment is rendered. If not announced in open court, written notice of appeal must be filed in the office of the clerk of superior court within 10 days after a judgment is rendered. The appeal must be perfected in the manner set out in subsection (b). Upon announcement of the appeal in open court or upon receipt of the written notice of appeal, the appeal shall be noted upon the judgment. If the judgment was mailed to the parties, then the time computations for appeal of such judgment shall be pursuant to G.S. 1A-1, Rule 6.

(b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or (2) by filing notice of appeal in the office of the clerk of superior court within 10 days after a judgment is rendered pursuant to subsection (a), and by serving a copy of the notice of appeal on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to appeal within 10 days after a judgment is rendered in a summary ejectment action, and within 20 days after a judgment is rendered in all other actions, shall result in the automatic dismissal of the appeal. Notwithstanding the foregoing deadlines, if an appealing party petitions to qualify as an indigent for the appeal and is denied, that party shall have an additional five days to perfect the appeal by paying the court costs. The failure to demand a trial by jury in district court by the appealing party before the time to perfect the appeal has expired is a waiver of the right thereto.

(b1) A person desiring to appeal as an indigent shall, within 10 days of a magistrate rendering a judgment, file an affidavit that the person is unable by reason of poverty to pay the costs of appeal. Within 20 days after a judgment is rendered, a superior or district court judge, magistrate, or the clerk of the superior court may authorize a person to appeal to district court as an indigent if the person is unable to pay the costs of appeal. The clerk of superior court shall authorize a person to appeal as an indigent if the person files the required affidavit and meets one or more of the criteria listed in G.S. 1-110. A superior or district court judge, a magistrate, or the clerk of the superior court may authorize a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as an indigent if the person cannot pay the costs of appeal.

The district court may dismiss an appeal and require the person filing the appeal to pay the court costs advanced if the allegations contained in the affidavit are determined to be untrue or if the court is satisfied that the action is frivolous or malicious. If the court dismisses the appeal, the court shall affirm the judgment of the magistrate.

(b2) A superior or district court judge, magistrate, or clerk of superior court authorizing a person to appeal to district court as an indigent pursuant to subsection (b1) of this section shall do at least one of the following:

- (1) Make written findings including (i) all criteria listed in G.S. 1-110 that led to the authorization of the person to appeal to district court as an indigent and (ii) all information or evidence used to determine that one or more criteria in G.S. 1-110 existed.
- (2) Make written findings indicating (i) that the authorization of the person to appeal to district court as an indigent was not based upon criteria listed in

G.S. 1-110 and (ii) all information or evidence used to determine that the person would otherwise be authorized to appeal to district court as an indigent.

(c) Whenever such appeal is docketed and is regularly set for trial, and the appellant fails to appear and prosecute his appeal, the presiding judge may have the appellant called and the appeal dismissed; and in such case the judgment of the magistrate shall be affirmed.

(d) When a defendant in a summary ejectment action has given notice of appeal and perfected the appeal in accordance with G.S. 7A-228(b), the plaintiff may serve upon the defendant a motion to dismiss the appeal if the defendant failed to raise a defense orally or in writing in the small claims court and failed to do at least one of the following:

- (1) Repealed by Session Laws 2024-54, s. 3(a), effective October 1, 2024, and applicable to judgments rendered on or after that date.
- (2) File a motion, answer, or counterclaim in the district court.
- (3) Comply with any obligation set forth in the Bond to Stay Execution on Appeal of Summary Ejectment Judgment entered by the court.

The motion to dismiss the appeal shall state that the defendant failed to raise a defense orally or in writing in the small claims court and list any of the deficiencies committed by the defendant, as described in subdivisions (2) and (3) of this subsection, and shall state that the court will decide the motion to dismiss without a hearing if the defendant fails to respond within 10 days of receipt of the motion. The defendant may defeat the motion to dismiss by responding within 10 days of receipt of the motion by doing at least one of the following acts: (i) if the motion is filed alleging a deficiency described in subdivision (2) of this subsection, by filing a responsive motion, answer, or counterclaim and serving the plaintiff with a copy thereof or (ii) if the motion is filed alleging a deficiency described in subdivision (3) of this subsection, by paying the amount due under the bond to stay execution, if any amount is owed by the defendant. If the defendant is not required by law to make any payment under the bond to stay execution, the court shall not use the failure to make a payment as a basis to dismiss the appeal. The court shall review the file, determine whether the motion satisfies the requirements of this subsection, determine whether the defendant has made a sufficient response to defeat the motion, and shall enter an order resolving the matter without a hearing.

(e) Notwithstanding G.S. 84-4, any party in an action appealed for a trial de novo, as provided for in this section, shall not be required to obtain legal representation. (1965, c. 310, s. 1; 1969, c. 1190, s. 22; 1979, 2nd Sess., c. 1328, s. 3; 1981, c. 599, s. 3; 1985, c. 753, ss. 1, 2; 1987, c. 553; 1993, c. 435, s. 2; 1998-120, s. 1; 2013-334, s. 3; 2014-115, s. 19(a); 2017-143, s. 2(b); 2024-47, s. 9(b); 2024-54, ss. 2(b), 3(a).)

§ 7A-229. Trial de novo on appeal.

Upon appeal noted, the clerk of superior court places the action upon the civil issue docket of the district court division. The district judge before whom the action is tried may order repleading or further pleading by some or all of the parties; may try the action on stipulation as to the issue; or may try it on the pleadings as filed. (1965, c. 310, s. 1.)

§ 7A-230. Jury trial on appeal.

The appellant in his written notice of appeal may demand a jury on the trial de novo. Within 10 days after receipt of the notice of appeal stating that the costs of the appeal have been paid, any appellee by written notice served on all parties and on the clerk of superior court may demand a jury on the trial de novo. (1965, c. 310, s. 1; 1981, c. 599, s. 3.)

§ 7A-231. Provisional and incidental remedies.

The provisional and incidental remedies of claim and delivery, subpoena duces tecum, production of documents and orders for the relinquishment of property subject to a possessory lien pursuant to G.S. 44A-4(a) are obtainable in small claims actions. The practice and procedure provided therefor in respect of civil actions generally is observed, conformed as may be required. No other provisional or incidental remedies are obtainable while the action is pending before the magistrate. (1965, c. 310, s. 1; 1985, c. 655, s. 3.)

§ 7A-232. Forms.

The following forms are sufficient for the purposes indicated under this article. Substantial conformity is sufficient.

FORM 1.

MAGISTRATE SUMMONS

NORTH CAROLINA

_____ COUNTY

A. B., Plaintiff

v.

SUMMONS

C. D., Defendant

To the above-named Defendant:

You are hereby summoned to appear before His Honor _____, Magistrate of the District Court, at _____ (time) _____, on _____ (date) _____, at the _____ (address) _____ in the _____ (city) _____, then and there to defend against proof of the claim stated in the complaint filed in this action, copy of which is served herewith. You may file written answer making defense to the claim in the office of the Clerk of Superior Court _____ County in _____, N. C., not later than the time set for trial. If you do not file answer, plaintiff must nevertheless prove his claim before the Magistrate. But if you fail to appear and defend against the proof offered, judgment for the relief demanded in the complaint may be rendered against you.

This _____ day of _____ (month) _____, _____.

Clerk of Superior Court

County

FORM 2.

NOTICE OF NON-ASSIGNMENT OF ACTION

NORTH CAROLINA

_____ County

A. B., Plaintiff

v.

NOTICE OF NON-ASSIGNMENT

General Court of Justice
District Court Division

C. D., Defendant OF ACTION

To the above-named Plaintiff:

Take notice that the civil action styled as above which you requested be assigned for trial before a Magistrate will not be assigned. Thirty-day summons to answer is being issued for service upon defendant, and upon the joining of issue this action will be placed on the civil issue docket for trial before a district judge.

This _____ day of _____ (month)_____, _____.

Clerk of Superior Court

County

FORM 3.

NOTICE OF ASSIGNMENT OF ACTION

NORTH CAROLINA

General Court of Justice
District Court Division
Before the Magistrate

_____ COUNTY

A. B., Plaintiff

v.

NOTICE OF ASSIGNMENT

C. D., Defendant

OF ACTION

To the above-named Plaintiff:

Take notice that the civil action styled as above, commenced by you as plaintiff, has been assigned for trial before His Honor _____, Magistrate of the District Court, at _____ (time) _____ on _____ (date) _____, at _____ (address) _____ in _____ (city) _____, N.C.

Clerk of Superior Court

County

FORM 4.

COMPLAINT ON A PROMISSORY NOTE

NORTH CAROLINA

General Court of Justice
District Court Division
SMALL CLAIM

_____ COUNTY

A. B., Plaintiff

v.

COMPLAINT

C. D., Defendant

1. Plaintiff is a resident of _____ County; defendant is a resident of _____ County.

2. Defendant on or about January 1, 1964, executed and delivered to plaintiff a promissory note (in the following words and figures: (here set out the note verbatim)); (a copy of which is annexed as Exhibit _____); (whereby defendant promised to pay to plaintiff or order on June 1, 1964,

the sum of two hundred and fifty dollars (\$250.00) with interest thereon at the rate of six percent (6%) per annum).

3. Defendant owes the plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the sum of two hundred and fifty dollars (\$250.00), interest and costs.

This _____ day of _____,

(signed) A. B., Plaintiff
(or E. F., Attorney for Plaintiff)

Service by mail is, is not, requested.

(signed) A. B., Plaintiff
(or E. F., Attorney for Plaintiff)

FORM 5.

COMPLAINT ON AN ACCOUNT

(Caption as in form 4)

1. (Allegation of residence of parties)

2. Defendant owes plaintiff two hundred and fifty dollars (\$250.00) according to the account annexed as Exhibit A.

Wherefore (etc., as in form 4).

FORM 6.

COMPLAINT FOR GOODS SOLD AND DELIVERED

(Caption as in form 4)

1. (Allegation of residence of parties)

2. Defendant owes plaintiff two hundred and fifty dollars (\$250.00) for goods sold and delivered to defendant between June 1, 1965, and December 1, 1965.

Wherefore (etc., as in form 4).

FORM 7.

COMPLAINT FOR MONEY LENT

(Caption as in form 4)

1. (Allegation of residence of parties)

2. Defendant owes plaintiff two hundred and fifty dollars (\$250.00) for money lent by plaintiff to defendant on or about June 1, 1965.

Wherefore (etc., as in form 4).

FORM 8.

COMPLAINT FOR CONVERSION

(Caption as in form 4)

1. (Allegation of residence of parties)
2. On or about June 1, 1965, defendant converted to his own use a set of plumbing tools of the value of two hundred and fifty dollars (\$250.00), the property of plaintiff.
Wherefore (etc., as in form 4).

FORM 9.

COMPLAINT FOR INJURY TO PERSON OR PROPERTY

(Caption as in form 4)

1. (Allegation of residence of parties)
2. On or about June 1, 1965, at the intersection of Main and Church Streets in the Town of Ashley, N. C., defendant (intentionally struck plaintiff a blow in the face) (negligently drove a bicycle into plaintiff) (intentionally tore plaintiff's clothing) (negligently drove a motorcycle into the side of plaintiff's automobile).
3. As a result (plaintiff suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one hundred and fifty dollars (\$150.00) (plaintiff suffered damage to his property above described in the sum of two hundred and fifty dollars (\$250.00).

Wherefore (etc., as in form 4).

FORM 10.

COMPLAINT TO RECOVER POSSESSION OF CHATTEL

(Caption as in form 4)

1. (Allegation of residence of parties)
2. Defendant has in his possession a set of plumber's tools of the value of two hundred dollars (\$200.00), the property of plaintiff. Plaintiff is entitled to immediate possession of the same but defendant refuses on demand to deliver the same to plaintiff.
3. Defendant has unlawfully kept possession of the property above described since on or about June 1, 1965, and has thereby deprived plaintiff of its use, to his damage in the sum of fifty dollars (\$50.00).

Wherefore plaintiff demands judgment against defendant for the recovery of possession of the property above described and for the sum of fifty dollars (\$50.00), interest and costs. (etc., as in form 4).

FORM 11.

COMPLAINT IN SUMMARY EJECTMENT

(Caption as in form 4)

1. (Allegation of residence of parties)
2. Defendant entered into possession of a tract of land (briefly described) as a lessee of plaintiff (or as lessee of E. F. who, after making the lease, assigned his estate to the plaintiff); the term of defendant expired on the 1st day of June, 1965 (or his term has ceased by nonpayment of rent, or otherwise, as the fact may be); the plaintiff has demanded possession of the premises of the defendant, who refused to surrender it, but holds over; the estate of plaintiff is still subsisting, and the plaintiff is entitled to immediate possession.

3. Defendant owes plaintiff the sum of fifty dollars (\$50.00) for rent of the premises from the 1st of May, 1965, to the 1st day of June, 1965, and one hundred dollars (\$100.00) for the occupation of the premises since the 1st day of June, 1965 to the present.

Wherefore, plaintiff demands judgment against defendant that he be put in immediate possession of the premises, and that he recover the sum of one hundred and fifty dollars (\$150.00), interest and costs. (etc., as in form 4). (1965, c. 310, s. 1; 1971, c. 1181, s. 2; 1999-456, s. 59.)

§ 7A-233. Reserved for future codification purposes.

§ 7A-234. Reserved for future codification purposes.

§ 7A-235. Reserved for future codification purposes.

§ 7A-236. Reserved for future codification purposes.

§ 7A-237. Reserved for future codification purposes.

§ 7A-238. Reserved for future codification purposes.

§ 7A-239. Reserved for future codification purposes.