

THE LEGALPAD

News You Can Use
Vol. 1 No. 2
September 15, 1998

INTRODUCTION

I am pleased to publish the second issue of "The LegalPad," a quarterly newsletter for clients, associates, and friends of THE LAW OFFICE OF WESLEY SCOTT JONES.

This newsletter is intended to address basic aspects of the ever-changing and often complex topics of law that affect our everyday lives. I hope that you will enjoy this newsletter, and hopefully it will be "news you can use."

This quarter's legal focus is on SMALL CLAIMS ACTIONS.

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Note: To request free copies of previous issues, please call and leave your name and mailing address.

What Is a Small Claims Action?

Small claims court is an excellent forum for resolving certain civil disputes in which the amount in controversy is small and the claims for relief are simple.

North Carolina law defines a small claim action as "a civil action wherein the amount in controversy does not exceed three thousand dollars (\$3,000.00), the only principal relief prayed for is monetary, or the recovery of specific personal property, or summary ejection, or any combination of the foregoing in properly joined claims, and the plaintiff has requested assignment to a magistrate in the manner provided by statute." The designation "Small Claim" on the face of the complaint operates as a request for assignment.

The most common actions assigned to a magistrate under these provisions are: 1) a complaint for money owed pursuant to default on a promissory note; 2) a complaint for money owed pursuant to an unpaid account; 3) a complaint for money owed pursuant to goods sold and delivered; 4) a complaint for money owed pursuant to a loan; 5) a complaint for conversion (the unauthorized and wrongful taking and use of your property); 6) a complaint for injury to your person or property; and 7) a complaint in summary ejection (removal of a tenant who has breached the terms of his residential lease, usually by nonpayment of rent). Forms for

these various claims can be found in the North Carolina General Statutes at section 7A-232, or at the Clerk of Court's office.

How Do I File a Small Claims Action?

The complaint in a small claims action must be in writing, signed by the plaintiff or his attorney. The complaint need not be in any particular form, and will be sufficient if it is in a form that enables a person of common understanding to know what is meant. In any event, the forms prescribed by section 7A-232 of the North Carolina General Statutes are sufficient and meet this requirement, and are intended to show the simplicity and brevity of the statement contemplated.

A plaintiff in a small claims action must file her complaint in the office of the Clerk of Superior Court of the county wherein the defendant, or one of the defendants resides. The cost for filing a small claims action is \$34.00. Clerks are not allowed to complete the forms for you and are prohibited by law from giving you legal advice.

Upon the filing of the complaint and assignment of the action to the magistrate, the clerk issues a Magistrate Summon (see attached Form 1). The issuance of a magistrate summons commences the action.

A copy of the summons and complaint must be served upon each defendant. Service upon a defendant should be attempted immediately

upon the filing of the complaint with the clerk. Usually this is accomplished through the Sheriff of your county, and for a fee of \$5.00 per defendant. A defendant who is not under any legal disability can also be served by registered or certified mail, but this must be done in strict compliance with all statutory requirements.

After service of the magistrate summons on the defendant, the Clerk gives written Notice of the Assignment to the plaintiff (see attached Form 2). This notice of assignment identifies the action, designates the magistrate to whom assignment is made, and specifies the time, date and place of trial.

The time for trial of a small claims action is set not later than 30 days after the action is commenced. 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.

What Do I Do if a Small Claims Action is Filed Against Me?

If you are named as a defendant in a small claims action, you may be notified by certified mail, or if service is made by Sheriff, you will be notified by the Sheriff. Usually the Sheriff will attempt to call a defendant, for the purposes of allowing a defendant to personally accept service at the Sheriff's office.

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. No particular form is required. Failure of a defendant to file a written answer after being served will operate as a denial of each allegation in the complaint.

A defendant in a small claims action is allowed to file a counterclaim, cross claim, or plead other new matters in avoidance. However, no such claim which would cause the amount in controversy to exceed the \$3000.00 is permissible. An attempt to do so may cause the magistrate to transfer the action to the District Court division.

Although you are not required to file a written answer with the Clerk of Court, you must attend the trial at the scheduled time and place, or such failure to attend will likely result in a judgment against you.

What Happens During the Trial of a Small Claims Action?

The trial of a small claims action before a magistrate is without a jury. Usually, the only people present are the magistrate, the plaintiff, the defendants, and any witnesses that the parties may bring to testify on their behalf. The plaintiff will be allowed to present evidence first. Once the plaintiff has presented evidence, the defendant is then allowed to present evidence. Upon the conclusion of evidence, the magistrate may immediately render a judgement or may in his discretion reserve judgement for a period not in excess of 10 days. Judgement in a small claims action is rendered in writing and signed by a magistrate.

After final disposition before the magistrate, the sole remedy for the losing, or aggrieved, party is appeal for a new trial (called a trial de novo) before a district court judge or jury. Notice of appeal may be given orally in open court upon announcement of the judgement or after entry of judgement. If appeal is 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 entry of

judgment. A written notice of appeal must be served on all parties. Failure to pay the appeals cost within 20 days after entry of judgment shall result in the automatic dismissal of the appeal. Failure to demand a trial by jury before the time to perfect the appeal has expired operates as a waiver of this right.

Final Thoughts.

Although small claims actions can be resolved quickly and are conducted in a less formal manner than are larger civil actions, they must be treated seriously because they can result in permanent consequences. Often, small errors can be fatal. For instance, before a complaint can be filed against a business, a prospective plaintiff must carefully determine what type of legal entity the business is, and then properly name this legal entity as a defendant. Obtaining proper service on a business defendant also requires special attention. Mistakes can be fatal and may result in dismissal of the action.

While it is common for parties to represent themselves in small claims actions, consulting with an attorney regarding your particular situation may be helpful, or even necessary.

I hope the information contained in this newsletter enhances your understanding of small claims actions and procedures.

Form 1 - MAGISTRATES SUMMONS

NORTH CAROLINA
NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
BEFORE THE MAGISTRATE

A. B., Plaintiff)
v.)
C. D., Defendant)

SUMMONS

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, a 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 _____, NC, not later than the time set for trial. If you do not file an 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 the ___ day of _____, 199__.

Clerk of Superior Court

FORM 2 - NOTICE OF ASSIGNMENT OF ACTION

NORTH CAROLINA
NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
BEFORE THE MAGISTRATE

A. B., Plaintiff)
v.)
C. D., Defendant)

NOTICE OF ASSIGNMENT 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) _____, NC.

Clerk of Superior Court

IMPORTANT PHONE NUMBERS

Clerk of Superior Court - New Hanover Co.	341- 4381
Sheriff, Civil Division - New Hanover Co.	341- 4211

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1442 MILITARY CUTOFF ROAD - SUITE 28
WILMINGTON, NORTH CAROLINA 28403

Address Correction or Forwarding Address Requested

address label

My greatest source of clients is from referrals by past and present clients, associates and friends such as yourself. Therefore, any referral from you would be greatly appreciated! I accept cases in the following areas:

- Construction Law
- Lien Filings and Defense
- Collection of Overdue Accounts
- Building Disputes and Litigation
- Foreclosures
- Criminal Law
- DWI
- Drug Charges
- Traffic Violations
- Juveniles
- Corporate Representation
- Corporate Formation
- Shareholder Agreements
- Homeowner and Condominium Associations
- Civil Litigation
- Business and Commercial Litigation
- Serious Accidents or Injuries
- District or Superior Court
- Small Claims Court
- Collections
- Overdue Accounts
- Promissory Notes
- Homeowner Association Dues
- Foreclosures
- General Advice and Counsel
- Professional Service
- Reasonable Fees
- Caring Advice
- Solutions to Problems

DISCLAIMER

This newsletter was prepared by THE LAW OFFICE OF WESLEY SCOTT JONES, as a courtesy for my clients, associates and friends and is not intended to be a comprehensive statement of the law. North Carolina laws change frequently and such changes could affect the information in the newsletter. If you have specific questions with regard to any matters contained in this newsletter, I encourage you to consult with me or another attorney. An attorney-client relationship will be created only by individualized and personalized advice from me to a current or prospective client, and only after the signing of a Contract for Legal Services by all parties affected thereby.

If you do not wish to receive this quarterly newsletter, or if you know of a friend or associate who would like to receive a copy of this newsletter, please contact my office either by phone, fax or mail. Thank you.