

Understanding the Civil Court Process

To access the civil courts you must file a lawsuit or be a party to a civil action. Most, but not all, civil actions have a plaintiff and a defendant.

What types of cases are “civil” cases?

There are many types of civil cases; the more common cases are:

Domestic: Divorce, child support, custody and visitation, and division of the marital property

Contracts: Disputes over an agreement, usually for the payment of money for services or goods

Personal injury: Action to recover damages (money) for injuries sustained due to someone else’s fault

Where do I file a civil case?

In general, there are three levels of the civil trial courts in which a lawsuit can be filed. However, there are exceptions to these rules, so seek the advice of an attorney before filing.

Small Claims: Actions for \$4,000 or less, and many landlord tenant disputes

District Court: Actions for \$10,000 and less, and all domestic cases

Superior Court: Actions for over \$10,000

What does it cost to file a case?

Court costs vary depending upon which division you file the lawsuit in. You can contact the Clerk of Superior Court’s office in your county for the current cost of court. You may have to pay additional fees besides court costs. These include service fees, which are paid to the sheriff.

Will there be a jury in my case?

Not necessarily. It depends upon the type of case, and even if you are entitled to a jury trial, you must still request one.

Does the court appoint a lawyer to represent me?

No. Only in criminal cases are you guaranteed a right to an attorney paid for by the state. In the civil courts, you must hire your own attorney.

How can I find an attorney to represent me?

If you do not know of an attorney in your area, you can contact the Lawyer Referral Service of the North Carolina Bar Association. The Lawyer Referral Service maintains a list of attorneys who provide an initial consultation at a reduced cost. Call: 800-662-7660.

If your income is limited, you may qualify for free legal services provided by the legal services office in your area. Call: (919) 828-4647.

What happens if I do not go to court on my court date?

If you are the plaintiff, your case may be dismissed.

If you are the defendant, the judge may enter a judgment against you even if you are not present, or the judge may continue the case.

If you cannot be in court for some reason, you should immediately notify your attorney. If you do not have an attorney you must file a motion to continue the case with the Clerk of Superior Court.

If I win my case, what am I entitled to?

It depends upon the type of case you filed and what type of relief you asked for (i.e., divorce or money).

If I lose my case, is there anything I can do?

You may have the right to appeal the judge or jury’s decision. Most appeals will go to the appellate courts, which are the Court of Appeals and the Supreme Court.

Where can I find North Carolina Law?

There are several locations where North Carolina statutes and case law are maintained. The North Carolina Supreme Court Library in Raleigh maintains an extensive collection of state (including other states) and federal law, periodicals, and law reviews. www.nccourts.org

Most public libraries and university libraries have the North Carolina General Statutes. All of the law schools in North Carolina have law libraries, but should be contacted to determine whether the public can have access to those books. Those law schools are at Campbell University, Duke University, North Carolina Central University, University of North Carolina at Chapel Hill, and Wake Forest University.

The North Carolina General Statutes can be also be found on-line at www.ncga.state.nc.us

COST

Definitions of Common Legal Terms

Answer: The response to a **complaint**.

Appeal: A request, usually by the losing party, to have a higher court review the case and make a ruling.

Appellate Courts: The Court of Appeals and Supreme Court hear **appeals** of certain cases.

Case Law: An appellate court's interpretation of, and rulings on the law.

Common Law: The Law of England, which was brought to the United States. It includes law based on rules and principles, which are not enacted by the legislature. Today, much of the common law has been enacted and is now referred to as statutory law.

Complaint: The initial **pleading** by which a lawsuit is begun.

Defendant: The person or entity against which the lawsuit is brought.

Discovery: This is the method in which each party gets to "discover" the facts, witnesses, and theory of the other side's case.

Judgment: The ruling or decision of the judge (or jury) in the case, which determines the rights of the parties. A judgment is sometimes referred to as an **order**.

Jurisdiction: The power and authority of the court to hear certain cases. (i.e., the jurisdiction for divorce cases is in District not Superior Court).

Motions: An application or request to the court asking for a ruling or action. (i.e., Motion to Continue the case; Motion to Compel Discovery; Motion for Summary Judgment)

Order: A ruling or decision from the judge directing someone to do something or giving a decision in the case. Orders can be entered at any time in the case, and often are entered in response to a **motion**. An order is sometimes referred to as a **judgment**.

Plaintiff: The person or entity bringing or filing the lawsuit.

Pleadings: General term used to refer to papers requesting something or responding to a request that are filed in the case, including the **complaint** and **answer**.

Statutes: Laws written by the legislature. Found in the North Carolina General Statutes.

Subpoena: An order to appear at a set time and place to testify or to produce documents.

Summons: Issued by the Clerk of Court usually at the time of filing the **complaint**, and is the official notice of the lawsuits.

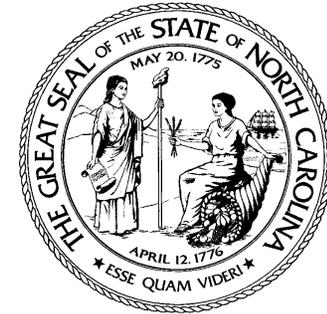
Trial de Novo: A new trial on the same issue by a higher court, but not an **appellate court**.

Venue: The particular county in which the court with **jurisdiction** may hear the case (i.e., a divorce is filed in District Court in the county where either the **plaintiff** or **defendant** resides).

Voluntary Dismissal: The **plaintiff's** decision to dismiss the case. A voluntary dismissal with prejudice permanently ends the case. A voluntary dismissal without prejudice allows the plaintiff to file the lawsuit again within one year.

The information provided is to assist you in understanding some of the basic functions of the courts in civil matters. It is not intended and should not be considered as a substitute for legal counsel. If you have any questions or concerns about your legal rights or remedies, you should contact an attorney immediately.

UNDERSTANDING THE CIVIL COURT PROCESS IN THE STATE OF NORTH CAROLINA



The Honorable I. Beverly Lake, Jr.
Chief Justice
Supreme Court of North Carolina

John M. Kennedy
Director
Administrative Office of the Courts