

Magistrates Court And You

Often called "the small claims court," the Magistrate's Court is a part of the state's District Court system. These courts have been made easily available. One is located in every county seat in North Carolina, and in each large city.

An average citizen can settle a small claim quickly, simply and inexpensively in this court. You don't need to hire a lawyer to represent you in the Magistrate's Court, although you may if you wish. A lawyer knows about legal questions and procedures, and as a general rule you can bring a controversy to the courts only once. It's up to you to decide whether you need an expert's assistance. If in doubt, a short conference with a lawyer may be worthwhile.

The actual hearing is relatively informal. It will often take place in an office, instead of a courtroom. A local resident will be conducting the trial, and will be as helpful as possible. However, the magistrate is a judicial official, whose decisions have the same force and effect as the rulings of any other court. A disagreement can be resolved here with finality by the State's authority.

PROBLEMS YOU CAN TAKE TO THIS COURT

The amount of money or the value of property involved in a Magistrate's Court case cannot exceed \$300. If the value of your claim exceeds that amount, and you do not consider the sum over \$300 to be important, you may reduce the amount of your claim to \$300. However, if you choose to do this, you forfeit any right you may have to the amount over \$300.

Many types of complaints may be taken to the Magistrate's Court. Most cases involve a claim that money is owed to the person who sues. Many cases are filed when a landlord tries to evict a tenant who has not paid the rent. A large number are brought by business operators who wish to have a customer's debt established and recorded officially.

Few suits are brought by persons seeking money from companies, but these courts can be used for that purpose. For example, you can sue in the Magistrate's Court if a cleaner damages your clothing and refuses to pay for it. If an appliance shop does unauthorized work on your television set, then will not return it unless you pay for the unauthorized work, you may sue to get your television set.

Suppose your landlord unjustly refuses to return your security deposit after you move. A furnace repair may not have been completed as promised, and you want to recover a part of the amount you paid in advance. An automobile service shop may have broken your car window while fixing a door, and the shop refuses to assume responsibility for the damage it did. Someone may have dented the fender of your car, and refuses to pay the \$50 damages. The use of an improper part in a refrigerator repair may have been the reason you later had to pay a large bill for additional repairs by another company, and the original serviceman refuses to pay for the damage caused by his carelessness. All these problems can be taken into the Magistrate's Court to be resolved.

If someone causes physical injury to another person, such as in an automobile accident, the Magistrate's Court may be used to obtain a judgment for the damages. However, most injured persons will not know the amount which could properly be claimed for such injuries. And, because expert advice is usually

necessary to decide the amount of damages to be claimed, the Magistrate's Court is not often used in cases involving physical injuries.

WHO CAN SUE AND BE SUED

Persons 18 years old and over may bring or defend their own cases in the Magistrate's Court. A person under 18 can have a claim filed by a parent, relative, or friend who is 18 years old or over and has been appointed by the court.

You can sue any person or company in North Carolina who has damaged you or your property, owes you money, or has personal property you claim as yours. However, if the person you wish to sue is under 18 years of age, or is under any legal disability, such as mental incompetence, you should ask a lawyer for assistance.

As a general rule, the company or person sued must be located in North Carolina, in the county where the lawsuit is filed.

GETTING YOUR CASE TO COURT

Procedures for bringing suit are simple. Here's what you do:

1. File a written "complaint" with the clerk of Superior Court at the courthouse in the county where at least one of the people you are suing lives. If you are suing a store, you must file your complaint in the county in which the store is located.

2. Call the clerk's office in the county courthouse to find out when it is open and where it's located. If you can't go during office hours yourself, someone else can pick up the necessary forms and make arrangements to begin the lawsuit.

3. At the office of the clerk of Superior Court, ask to see the clerk in charge of Magistrate's Court records. This person will give you forms to fill out. Read the instructions carefully.

4. You will have to fill out the "complaint," which states the reason you are suing, the amount of money involved, or description of the exact articles you wish to recover. Each person being sued gets a copy of the complaint.

There are different forms for

different types of claims, and the examples shown in this booklet will give you an idea of what is normally used. If the examples do not suit your needs, you may create your own "complaint." If you do, you should be careful to give notice of what your claim is about, and be sure to include the usual information you find contained in the examples.

5. Be sure you state correctly on the complaint the full name and address of each person you are suing. If you are suing a business, you should know if it is a corporation. If it is, you must sue it by using its correct corporate name. If it is not, you name the owner or owners of the business.

Information as to the correct name, or names of owners, is usually available from the company itself or from records in the courthouse. Property tax listing records, the index to judgments, and other sources can supply such information. If you have trouble, ask for help in the clerk's office.

6. You must pay the clerk a filing fee of \$7.00. If you win the case, this filing fee will be added into the total amount of money awarded to you in the judgement.

7. The clerk will help you set the date and time for the trial. The date will be no later than 30 days from the time you file your complaint.

8. One of the forms the clerk will give you is a "summons." This is a notice to the person you are suing to appear in the Magistrate's Court at the appointed time. Due process of law requires that a person must receive notice, and an opportunity to prepare for trial.

Service of the notice upon the defendants can be by the clerk mailing the papers (certified mail, return receipt requested) or by getting the sheriff's office to deliver the papers. If mailing is chosen, the current charge of the Postal Service must be given to the Clerk of Court, and the words "Service by mail requested" must be written on the complaint.

If service by the sheriff's office is chosen, for each person being sued you must take a summons, a copy of the complaint, and a fee of \$2.00 to the county sheriff's office. The sheriff must deliver the summons to the person you're

suing, or leave it with a responsible person at the home, or the case cannot be heard in court. If the sheriff returns the summons and says the person cannot be found, you may issue another summons if you obtain information which would allow the sheriff to deliver the required notice. One of the examples in this booklet shows the form used for a second summons.

HOW TO PREPARE FOR THE TRIAL

Knowing what to expect can often be useful and comforting. If possible, visit the Magistrate's Court as an observer. The clerk's office can tell you when and where the magistrate will be hearing cases, and may be able to tell you when a case similar to yours is scheduled.

Try to get together all evidence which might help you. Look carefully at contracts, sales tickets, receipts, photographs, and anything which might show the magistrate something you wish to prove.

If there are persons who have observed events that led to the lawsuit, and their statements can help you prove your claim, you should try to get them to the trial. You will need to tell your witnesses the date, time and place, and later remind them.

Sometimes a person who could be a witness for your side will refuse to testify. Some people do not want to get involved. Some can't leave their job conveniently, or voluntarily. You can get a "subpoena" from the clerk of Superior Court. This is an official legal notice, delivered by the sheriff's office, that requires a witness to come to court.

Each subpoenaed witness is entitled to be paid a fee of \$5.00 and travel expenses for testifying. A claim for fees must be filed with the clerk. These fees are added to the court costs.

which are usually paid by the losing party. However, payment will not be paid for more than two witnesses to prove a single issue.

If you won't be able to be in court at the specified time, notify the Clerk of Court or the magistrate at once. With the consent of the magistrate, your case may be scheduled for another time. If you fail to notify them and don't appear for the trial, your case will be dismissed, and you might not be able to file it again.

Check with the clerk's office to determine whether the other person has been served with notice of the suit. If not, you may be able to provide useful information to the sheriff regarding the location of the other person. And, you would certainly want to notify your witnesses if the trial is to be delayed.

If the person you have sued decides to settle the dispute before trial, and you are satisfied with what has been done, go to the clerk's office or the magistrate and tell them your case is settled. The suit will then be dismissed. However your filing and summons fees will not be returned, so you may consider this fact when deciding upon the amount of a settlement.

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The Trial

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