

**STATE OF NORTH CAROLINA
CUMBERLAND COUNTY
FAMILY COURT**

**ACCESS AND VISITATION
PROGRAM**



**Initial Filing for
Custody/Visitation
Packet**

FILE IT YOURSELF INITIAL FILING PACKET

The information provided in these packets is designed to assist individuals who are not represented by an attorney (“pro se”) to file or make motions in a domestic action and to represent themselves in a hearing before a Family Court Judge.

As a pro se litigant, you are responsible to make certain that the forms you use are appropriate for your situation. Therefore, you should review and research applicable laws and rules. If you are unable to do this, you should speak to an attorney.

Please Note: Family Court staff CANNOT assist you in filling out forms or checking to see that you have correctly filled out the forms.

The packet contains instructions for completing the forms. **READ ALL INSTRUCTIONS** before you complete the forms.

COMPLAINT FOR CHILD CUSTODY

The basic complaint for child custody is designed for non-emergency custody or visitation claims that involve the child(ren)’s mother and father. It is designed to be used the first time a court determines the custody or visitation rights of the parties.

READ ALL INSTRUCTIONS before you complete the forms.

1. Instructions:

- Complaint for Child Custody

2. Forms: Print and complete all of the following:

- Petition To Proceed As An Indigent (AOC-G-106)
- Family Court Notice (Form A&V-FC-001) *Note: Your county may not have a Family Court
- Domestic Civil Action Cover Sheet (AOC-CV-750)
- Custody Mediation Cover Sheet
- Civil Summons (AOC-CV-100)
- Complaint for Child Custody/Visitation
- Affidavit as to Status of Minor Child (AOC-CV-609)
- Affidavit Re: Servicemembers’ Civil Relief Act (See Step 5 below)
- Affidavit of Service of Process

3. Service Information:

- Information regarding service of your Summons, Complaint and other documents

INSTRUCTIONS FOR PREPARING AND FILING YOUR INITIAL FILING

STEP 1 THE DOCUMENTS YOU NEED TO COMPLETE FOR INITIAL FILING

- Petition To Proceed As An Indigent (AOC-G-106)
- Family Court Notice (Form A&V-FC-001) *Note: Your county may not have a Family Court
- Domestic Civil Action Cover Sheet (AOC-CV-750)
- Custody Mediation Cover Sheet
- Civil Summons (AOC-CV-100)
- Complaint for Child Custody/Visitation
- Affidavit as to Status of Minor Child (AOC-CV-609)
- Affidavit Re: Servicemembers' Civil Relief Act (See Step 5 below)
- Affidavit of Service of Process By

STEP 2 COMPLETING & FILING YOUR DOCUMENTS

1. You may handwrite or type the information required in these forms. It is preferred that you TYPE the information.
2. Please note that the *Complaint for Child Custody/Visitation* and *Affidavit as to Status of Minor Child* (AOC-CV-609) contain "Verification" sections which must be signed in the presence of a Notary Public. (Check your bank, library, personal services near you on Google). There are NO notaries in the Family Court Office.
3. There may be a filing fee associated with these documents. To determine the amount of the fee, please refer to www.nccourts.org/Courts/Trial/Costs or you may contact the Clerk's Office in your county. Payment must be made in **cash, money order or credit card. No personal checks will be accepted.** If you are indigent, you may file a Petition to Sue as Indigent (AOC-G-106) with the Clerk's Office in your county courthouse.
4. The Domestic Civil Action coversheet (AOC-CV-750) and the custody mediation coversheet **MUST** be submitted to the Family Court or District Court Judges' Office on the date of filing.

STEP 3

SERVING THE DEFENDANT

In order for your case to be binding against the Defendant, the Defendant must be served in a manner that is recognized by North Carolina law. Please see Rule 4 of the North Carolina Rules of Civil Procedure regarding process available on this website under Domestic Rules & Form; some basic information is also included in this packet. If you are unclear as to how to serve the Defendant, you should speak to an attorney. If you serve by certified mail, you'll need to complete and file the Affidavit of Service of Process (AOC-CV-105), which form is in this packet.

PLEASE NOTE: You must file this packet with the Clerk's Office **BEFORE** you serve the other party with the Summons and Complaint!

STEP 4 CUSTODY MEDIATION

If you have any questions about Custody Mediation, you may contact the Custody Mediation Office serving your county. Please contact the District Court Judges' Office in your county for that number.

- Within an estimated 2 weeks after your case has been filed, you will receive a letter from the Custody Mediation Office scheduling your case for Mediation Orientation/Parent Education class. Mediation Orientation and Parent Education is mandatory. You will not be able to proceed with your visitation action unless you attend this class.
- On the day of your Mediation Orientation session, you will be allowed to schedule a Mediation Session between yourself and the other party to discuss the visitation of your child(ren). You will be given the opportunity to try and work out an agreement without going to court.
- If you cannot reach an agreement regarding visitation with, the other party, the court will schedule your case for trial. You will receive a notice to appear in court, at the address you provided when you filed your complaint. (If you move, it is your responsibility to contact the Access and Visitation Office to notify them of your new address).

STEP 5 APPEARING AT COURT ON THE DAY OF YOUR CUSTODY TRIAL

1. If applicable, please check with your county Family Court office to determine when calendar call is scheduled. Please arrive at the assigned courtroom no later than 8:45 a.m. Make sure you allow yourself ample time to find parking (either on-street or in one of the public garages), go through courthouse security, and take the busy elevators up to the courtroom. It is recommended that you arrive no later than 8:15 a.m. on the date of your trial.
2. At calendar call, your assigned Judge will tell you on what date you need to return for your trial.
3. On that return date, your trial will be conducted. At the conclusion of the trial, your assigned judge will render his/her ruling at a later date.

STEP 6

CUSTODY ORDER

1. A final Order will then be prepared. If the Defendant is represented by an attorney, the Judge may request that the attorney draft a proposed order for the Judge's signature. Make sure that the Defendant's attorney, District Court Judges' Office or Family Court Office has your address, telephone number, email address and any other pertinent contact information so that the opposing party can share with you a proposed draft order prior to submission to your Judge. Once the order is signed, you will need to pick up the order from the District Court Judges' office or Family Court office, take the order to the Clerk's office in your county to be filed, and send the opposing party a copy of said filed order.

QUESTIONS

After reading these instructions and reviewing the forms and all relevant statutory laws and procedural rules, if you feel that you are unable to represent yourself or complete the paperwork **ON YOUR OWN**, (Note: Access and Visitation Coordinator or Family Court staff **CANNOT** assist you in preparing your paperwork), or if any of the instructions are unclear to you, you should speak with an attorney. If at any point during the process you should wish to proceed with the help of any attorney, some resource information is available in your packet.

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice

☐ District ☐ Superior Court Division

Name Of Plaintiff

VERSUS

Name Of Defendant

PETITION TO PROCEED
AS AN INDIGENT

G.S. 1-110; 7A-228

AFFIDAVIT

(check one of the four boxes below)

☐ **Petition To Assert Claims** - As a party in the above entitled action, I affirm that I am financially unable to advance the required costs for the prosecution of the claims I have asserted. Therefore, I now petition the Court for an order allowing me to assert my claims as an indigent.☐ I am an inmate in the custody of the Division of Prisons of the Department of Adult Correction.

(NOTE TO CLERK: If this block is checked, this Petition must be submitted to a Superior Court Judge for disposition provided on the reverse.)

☐ **Petition To File Motions** - As a party in the above entitled action, I affirm that I am financially unable to advance the required costs to file a notice of hearing on a motion. Therefore, I now petition the Court for an order allowing me to file my motion as an indigent.☐ **Petition To Appeal** - As the individual appellant in the above entitled small claims action, I affirm that I am financially unable to pay the cost for the appeal of this action from small claims to district court. Therefore, I now petition the Court for an order allowing me to appeal this action to district court as an indigent.☐ **Petition To File Expunction Petition** - As the petitioner in the above entitled action, I affirm that I am financially unable to advance the required costs to file an expunction petition. Therefore, I now petition the Court for an order allowing me to file my expunction petition as an indigent.

(check one or more of the boxes below as applicable)

☐ I am presently a recipient of☐ Supplemental Nutrition Assistance Program (SNAP/food stamps).☐ Temporary Assistance for Needy Families (TANF).☐ Supplemental Security Income (SSI).☐ I am represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons, or I am represented by private counsel working on behalf of such a legal services organization. (Attach a letter from your legal services attorney or have your attorney sign the certificate below.)☐ Although I am not a recipient of SNAP/food stamps, TANF, or SSI, nor am I represented by legal services, I am financially unable to advance the costs of filing this action or appeal.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature

Signature Of Petitioner

Title Of Person Authorized To Administer Oaths

Name And Address Of Petitioner (type or print)

SEAL

Date Commission Expires

CERTIFICATE OF LEGAL SERVICES/PRO BONO REPRESENTATION

I certify that the above named petitioner is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons or is represented by private counsel working on behalf of or under the auspices of such legal services organization.

Date

Signature

Name And Address (type or print)

ORDER

Based on the Affidavit appearing above, it is ORDERED that:

☐ the petitioner is authorized to assert claims or to file notices of hearing or petitions in this action as an indigent.☐ the petition is denied.

Date

Signature

☐ Assistant CSC☐ Clerk Of Superior Court☐ Judge**NOTE TO CLERK:** If the petitioner is NOT a recipient of SNAP/food stamps, TANF, SSI or is NOT represented by legal services or a private attorney on behalf of legal services, you may ask for additional financial information to determine whether the petitioner is unable to pay the costs.

(Over)

ORDER - APPEAL FROM MAGISTRATE JUDGMENT IN SMALL CLAIMS ACTION

The undersigned considered the following information and evidence in addition to the Affidavit appearing above:

(choose 1 or 2 if authorizing the petitioner to appeal as an indigent)

- ☐ 1. The Court finds that the petitioner is unable to pay the costs of appeal and meets the following criteria listed in G.S. 1-110(a):
- ☐ Petitioner receives electronic food and nutrition benefits.
 - ☐ Petitioner receives Work First Family Assistance.
 - ☐ Petitioner receives Supplemental Security Income (SSI).
 - ☐ Petitioner is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons.
 - ☐ Petitioner is represented by private counsel working on the behalf of or under the auspices of a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons.
- ☐ 2. The Court finds that the petitioner does not meet any of the criteria listed in G.S. 1-110(a), but is unable to pay the costs of appeal based on the following:

Based on the Affidavit and findings appearing above, it is ORDERED that:

- ☐ the petitioner is authorized to appeal in this small claims action as an indigent.
- ☐ the petition is denied.

Date	Signature	☐ Assistant CSC	☐ Clerk Of Superior Court
		☐ Judge	☐ Magistrate

ORDER - DIVISION OF PRISONS INMATES

The undersigned superior court judge of this district finds that the petitioner is an inmate in the custody of the Division of Prisons of the Department of Adult Correction and that the complaint

- ☐ is not frivolous.
- ☐ is frivolous.

It is ORDERED that

- ☐ the petitioner is authorized to sue in this action as an indigent.
- ☐ the petitioner is not authorized to sue as an indigent.
- ☐ the action is dismissed.

Date	Name Of Superior Court Judge (type or print)	Signature Of Superior Court Judge
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CERTIFICATION

I certify that this Petition has been served on the party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date	Signature	☐ Deputy CSC	☐ Assistant CSC	☐ Clerk Of Superior Court
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NOTE: G.S. 1-110(b) provides: "The clerk of superior court shall serve a copy of the order of dismissal upon the prison inmate."



FAMILY COURT NOTICE

YOU HAVE BEEN SERVED WITH A COMPLAINT FILED IN
CUMBERLAND COUNTY, NORTH CAROLINA FAMILY COURT

This action may affect your rights to child custody and/or visitation.

You may want to consult with an attorney about your rights and responsibilities in this action. Time is of the essence therefore your rights may be limited if you do not act within **(30)** days of receiving this complaint.

You are required to keep the court advised of your current address and any address changes. Failure to do so may result in hearings being held and orders entered without your participation.

To ensure that you receive all hearings that may affect your rights, you should immediately contact the following:

Access and Visitation Program Coordinator
P.O. Box 363
Fayetteville, North Carolina 28302
Telephone: 910-475-3245

All inquired should include your file number:
(_____ CVD _____)

THE FAMILY COURT STAFF CANNOT GIVE YOU LEGAL ADVICE.

They will assist you with information concerning court procedures and inquiries about court dates.

STATE OF NORTH CAROLINAFile No. In The General Court Of Justice
District Court Division

____ County

Name And Address Of Plaintiff 1

Name And Address Of Plaintiff 2

DOMESTIC**CIVIL ACTION COVER SHEET**☐ INITIAL FILING ☐ SUBSEQUENT FILING

Rule 5(b), Rules of Practice For Superior and District Courts

VERSUSJury Demanded In Pleading? ☐ No ☐ Yes

Name Of Defendant 1

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

Summons Submitted ☐ Yes ☐ No

Telephone No.

Cell Telephone No.

Name Of Defendant 2

NC Attorney Bar No.

Attorney E-Mail Address

☐ Initial Appearance in Case☐ Change of AddressSummons Submitted ☐ Yes ☐ No

Name Of Firm

Counsel for

☐ All Plaintiffs ☐ All Defendants ☐ Only (List party(ies) represented)

FAX No.

TYPE OF PLEADING**CLAIMS FOR RELIEF FOR:**

(check all that apply)

- ☐ Amended Answer/Reply (AMND-Response)
- ☐ Amended Complaint (AMND)
- ☐ Answer/Reply (ANSW-Response)
- ☐ Complaint (COMP)
- ☐ Confession Of Judgment (CNFJ)
- ☐ Contemp (CNTP) Assess *Motions Fee*
- ☐ Continue (CNTN) Assess *Motions Fee*
- ☐ Compel (CMPL) Assess *Motions Fee*
- ☐ Counterclaim vs. (CTCL) Assess *Counterclaim Costs*
- ☐ Extend Time For An Answer (MEOT-Response) Assess *Motion Fee*
- ☐ Modification Of Alimony (MALI) Assess *Motions Fee*
- ☐ Modification Of Custody (MCUS) Assess *Motions Fee*
- ☐ Modification Of Support in non-IV-D cases (MSUP) Assess *Motions Fee*
- ☐ Modification Of Visitation (MVIS) Assess *Motions Fee*
- ☐ Rule 12 Motion In Lieu Of Answer (MDLA) Assess *Motions Fee*
- ☐ Sanctions (SANC) Assess *Motions Fee*
- ☐ Show Cause (SHOW) Assess *Motions Fee*
- ☐ Transfer (TRFR) Assess *Motion Fee*
- ☐ Vacate/Modify Judgment or Order (VCMD) Assess *Motions Fee*
- ☐ Other (OTHR): (Use codes from *Motions Coversheet* AOC-CV-752 or specify)

(check all that apply)

- ☐ Alimony (ALIM)
- ☐ Annulment (ANUL)
- ☐ Child Support (CSUP)
- ☐ Custody (CUST)
- ☐ Divorce (DIVR)
- ☐ Divorce From Bed And Board (DIVB)
- ☐ Domestic Violence (DOME)
- ☐ Equitable Distribution (EQU)
- ☐ Medical Coverage (MEDC)
- ☐ Paternity (PATR)
- ☐ Possession Of Personal Property (POPP)
- ☐ Post Separation Support (PSSU)
- ☐ Reimbursement For Public Assistance (RPPA)
- ☐ Visitation (VIST)
- ☐ Other: (specify and list separately)

Date

Signature Of Attorney/Party

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include a Domestic (AOC-CV-750) Motions (AOC-CV-752) or Court Action (AOC-CV-753) cover sheet.

CUSTODY MEDIATION: CASE INFORMATION FORM

****DO NOT FILE: SUBMIT TO CUSTODY MEDIATION 2ND FLOOR ROOM 241****

STATE OF NORTH CAROLINA COUNTY OF CUMBERLAND JUDICIAL DISTRICT 14	IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION
Plaintiff _____ vs. Defendant _____	FILE NO.: _____ -CVD- _____ Assigned Judge: _____
PLAINTIFF(S):	Day Phone: _____
Mailing Address: _____	Night Phone: _____
Date of Birth: _____	Email: _____
Plaintiff's Attorney: _____	Phone: _____
Address: _____	Fax: _____
	Email: _____
DEFENDANT(S):	Day Phone: _____
Mailing Address: _____	Night Phone: _____
Date of Birth: _____	Email: _____
Defendant's Attorney: _____	Phone: _____
Address: _____	Fax: _____
	Email: _____

1. Is there a pending or resolved military, civil or criminal domestic violence case involving the same parties in North Carolina or any other state? ☐ YES ☐ NO List type: _____ Expiration date: _____
If yes, you must attach a copy of all military, civil or criminal domestic violence restraining/protective orders.
2. Is DSS/CPS currently involved? ☐ YES ☐ NO Prior involvement? ☐ YES ☐ NO Date closed: _____
List date opened: _____ and reason case opened: _____
DSS Social Worker's name _____ County: _____ Tel#: _____
3. Is an interpreter needed for a participant? ☐ YES ☐ NO
If yes, what language(s) does the party speak? Spanish ☐ YES ☐ NO Other? _____
4. Have the parties attended orientation in the past 5 years? ☐ YES ☐ NO If yes, case/file number: _____ -CVD- _____
5. Have the parties ever attended mediation? ☐ YES ☐ NO If yes, case/file number: _____ -CVD- _____
6. Online/WebEx Orientation or Mediation Requested ☐ YES ☐ NO (must have private setting/email/internet)
Reason for Request (check one or more): Out-of-state/over 3 hours' drive ☐ (list state/distance _____);
DVPO ☐; Medical ☐; Other ☐? List reason: _____

CHILDREN INVOLVED IN CASE: (use back of form if needed):

NAME	AGE	M/F	DOB	CHILD RESIDES WITH	RELATIONSHIP

Marriage Date: _____ Separation Date: _____ Parties Never Married: _____

Signature: _____ Date: _____

☐ Plaintiff ☐ Plaintiff's Attorney ☐ Defendant ☐ Defendant's Attorney ☐ Intervenor ☐ Intervenor's Attorney

NORTH CAROLINA

COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

FILE NO. _____

_____ and

Plaintiff(s),

vs.

_____ and

Defendant(s)

NOW COMES the Plaintiff(s) alleging and saying:

1. The Plaintiff(s) is/are a citizen(s) and resident(s) of _____
County, North Carolina and has been for more than six (6) months preceding the institution
of this action.

2. The Defendant(s) is/are a resident(s) of _____ County,
_____ (name of State).

3. The Plaintiff(s) (fill in appropriate blanks): were married to each other on
_____ (month/day/year), and are the
_____ (state relationship) of the child(ren) who are the
subject of this Complaint; and separated from each other on _____ (if
applicable - month/day/year) and were divorced (if applicable) on _____
(month/day/year); or have never been married, but are the _____
of the child(ren) listed below that are the subject of this Complaint.

4. The Defendant(s) (fill in appropriate blanks): were married to each other on
_____ (month/day/year), and are the
_____ (state relationship) of the child(ren) who are the
subject of this Complaint; and separated from each other on _____ (if
applicable - month/day/year) and were divorced (if applicable) on _____

(month/day/year); or have never been married, but are the _____ of the child(ren) listed below that are the subject of this Complaint.

5. The full names, ages, and dates of birth for the child(ren) who are at issue in this case are: Full Name _____ Age _____ Date of Birth _____ ; Full Name _____ Age _____ Date of Birth _____ ; Full Name _____ Age _____ Date of Birth _____. (INSERT ADDITIONAL LINES IF NECESSARY)

6. This is a claim for custody of the minor child(ren) named above. Attached hereto and incorporated herein is a completed Affidavit as to Status of Minor Child (AOC-CV-609) for each child set forth above.

7. There (check the applicable box and fill in appropriate blanks): _____ IS a child support action for one or more of the children who are the subject of this action. The child support action is located at _____ (give file number, county and state of court): _____ IS NOT a child support action for one or more of the children who are the subject of this action.

8. The District Court of _____ County, North Carolina has personal jurisdiction over the parties and subject matter jurisdiction (including jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act) to decide the claims and render a custody determination in this action.

9. Venue of this action is proper in _____ County, North Carolina.

10. The Plaintiff(s) is/are a fit and proper person(s) to have custody of the minor child(ren) named above, and an award of custody to the Plaintiff(s) would be in the best interests and welfare of the named child(ren) in that: (state the facts)

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff(s) prays the Court for relief as follows:

1. Accept this verified Complaint as the Plaintiff(s) affidavit upon which the Court may base all of its Orders in this case;
2. That temporary custody (check box only if seeking) and permanent custody of the minor child(ren) be awarded to the Plaintiff(s); and
3. Grant the Plaintiff(s) such other and further relief as the Court deems just and proper.

Plaintiff's Signature

Plaintiff's Signature

Plaintiff's street/ mailing address Plaintiff's Telephone

Plaintiff's Signature

Plaintiff's Signature

Plaintiff's street/ mailing address Plaintiff's Telephone

VERIFICATION
(Must be signed before a Notary Public)

STATE OF _____

COUNTY OF _____

I, _____ (print your name), being first duly sworn, depose and say that I am the Plaintiff herein, that I have read the foregoing Complaint for Child Custody/Visitation and know the statements therein to be true of my own personal knowledge, except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true.

Plaintiff's Signature

Subscribed and affirmed before me this ____ day of _____, 20____.

Notary Public

My Commission Expires: _____

VERIFICATION
(Must be signed before a Notary Public)

STATE OF _____

COUNTY OF _____

I, _____ (print your name), being first duly sworn, depose and say that I am the Plaintiff herein, that I have read the foregoing Complaint for Child Custody/Visitation and know the statements therein to be true of my own personal knowledge, except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true.

Plaintiff's Signature

Subscribed and affirmed before me this ____ day of _____, 20____.

Notary Public

My Commission Expires: _____

STATE OF NORTH CAROLINA

Court File No.

In The General Court Of Justice
District Court Division

_____ County

AFFIDAVIT AS TO STATUS OF MINOR CHILD

G.S. 50A-209

Name And Address Of Plaintiff

VERSUS

Name And Address Of Defendant

Name Of Minor Child

Date Of Birth

Birthplace

I, the undersigned affiant, being first duly sworn, say that during the past five (5) years the above named minor child has lived as follows:

Period Of Residence		Address	Name Of Person Lived With	Present Address Of Person
From	To			
	Present			

I further say that: (Check those that apply)

☐ I have participated in litigation concerning the custody of the above named child.

Capacity As Participant

Name And Address Of Court

Date Of Child Custody Determination

Case No.

Details

☐ I have information about a custody proceeding. Examples of custody proceeding include divorce, proceeding related to domestic violence, a protective order, termination of parental rights or adoption that is pending in a court of this or another state and could affect this proceeding.

Name And Address Of Court

Details (include case number and describe nature of the proceeding)

☐ I know of a person as listed below, who has physical custody or claims to have custody or visitation rights with respect to the above named child.

Name And Address Of Person

☐ Physical Custody

☐ Claimed Custody

☐ Visitation Rights

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature Of Person Authorized To Administer Oaths

Signature Of Affiant

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court ☐ Magistrate

Name Of Affiant (type or print)

☐ Notary

Date My Commission Expires

Relationship To Above Named Child

SEAL

County Where Notarized

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice

____ County

Name And Address Of Plaintiff

VERSUS

Name And Address Of Defendant

SERVICEMEMBERS CIVIL RELIEF ACT DECLARATION

G.S. Ch. 127B, Art. 4; 50 U.S.C. 3901 to 4043

NOTE: Though this form may be used in a Chapter 45 Foreclosure action, it is not a substitute for the certification that may be required by G.S. 45-21.12A.

DECLARATION

I, the undersigned Declarant, under penalty of perjury declare the following to be true:

- As of the current date: (check one of the following)
☐ a. I have personal knowledge that the defendant named above is in military service.*
☐ b. I have personal knowledge that the defendant named above is **not** in military service.*
☐ c. I am unable to determine whether the defendant named above is in military service.*
- As of the current date, I ☐ have ☐ have not received a copy of a military order from the defendant named above relating to State active duty as a member of the North Carolina National Guard or service similar to State active duty as a member of the National Guard of another state. See G.S. 127B-27 and G.S. 127B-28(b).
- I ☐ used ☐ did not use the Servicemembers Civil Relief Act Website (<https://scra.dmdc.osd.mil/>) to determine the defendant's federal military service.
☐ The results from my use of that website are attached.
(NOTE: The Servicemembers Civil Relief Act Website is a website maintained by the Department of Defense (DoD). If DoD security certificates are not installed on your computer, you may experience security alerts from your internet browser when you attempt to access the website. Members of the North Carolina National Guard under an order of the Governor of this State and members of the National Guard of another state under an order of the governor of that state will **not** appear in the SCRA Website database.)
- The following facts support my statement as to the defendant's military service: (State how you know the defendant is or is not in the military. Be specific.)

***NOTE:** The term "military service" includes the following: active duty service as a member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; service as a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency; active service as a commissioned officer of the Public Health Service or of the National Oceanic and Atmospheric Administration; any period of service during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. 50 U.S.C. 3911(2). The term "military service" also includes the following: State active duty as a member of the North Carolina National Guard under an order of the Governor pursuant to Chapter 127A of the General Statutes, for a period of more than 30 consecutive days; service as a member of the National Guard of another state who resides in North Carolina and is under an order of the governor of that state that is similar to State active duty, for a period of more than 30 consecutive days. G.S. 127B-27(3) and G.S. 127B-27(4).

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Date

Signature Of Declarant

Name Of Declarant (type or print)

NOTE TO COURT: Do not proceed to enter judgment in a non-criminal case in which the defendant has not made an appearance until a Servicemembers Civil Relief Act affidavit or declaration (whether on this form or not) has been filed, and if it appears that the defendant is in military service, do not proceed to enter judgment until such time that you have appointed an attorney to represent him or her.

(Over)

Information About Servicemembers Civil Relief Act Affidavits And Declarations

1. Plaintiff to file affidavit/declaration

In any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

- (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
- (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

50 U.S.C. 3931(b)(1).

2. Appointment of attorney to represent defendant in military service

If in a civil action or proceeding in which the defendant does not make an appearance it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed to represent a service member cannot locate the service member, actions by the attorney in the case shall not waive any defense of the service member or otherwise bind the service member. 50 U.S.C. 3931(b)(2).

State funds are not available to pay attorneys appointed pursuant to the Servicemembers Civil Relief Act. To comply with the federal Violence Against Women Act and in consideration of G.S. 50B-2(a), 50C-2(b), and 50D-2(b), plaintiffs in Chapter 50B, Chapter 50C, and Chapter 50D proceedings should not be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. Plaintiffs in other types of actions and proceedings may be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. The allowance or disallowance of the ordering of costs will require a case-specific analysis.

3. Defendant's military status not ascertained by affidavit/declaration

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act. 50 U.S.C. 3931(b)(3).

4. Satisfaction of requirement for affidavit/declaration

The requirement for an affidavit above may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury. 50 U.S.C. 3931(b)(4). The presiding judicial official will determine whether the submitted affidavit is sufficient.

5. Penalty for making or using false affidavit/declaration

A person who makes or uses an affidavit permitted under 50 U.S.C. 3931(b) (or a statement, declaration, verification, or certificate as authorized under 50 U.S.C. 3931(b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both. 50 U.S.C. 3931(c).

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Plaintiff

Address

City, State, Zip

VERSUS

Name Of Defendant(s)

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!

¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!

Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Date Issued

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM ☐ PM

Signature

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	Time Served ☐ AM ☐ PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

☐ Acceptance of service. Summons and complaint received by: ☐ Defendant 1.	Date Accepted	Signature
☐ Other: (type or print name)		

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served ☐ AM ☐ PM	Name Of Defendant
-------------	--	-------------------

- ☐ By delivering to the defendant named above a copy of the summons and complaint.
- ☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- ☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

☐ Acceptance of service. Summons and complaint received by: ☐ Defendant 2.	Date Accepted	Signature
☐ Other: (type or print name)		

☐ Other manner of service (specify)

☐ Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (type or print)
Date Of Return	County Of Sheriff

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Plaintiff(s)

VERSUS

Name Of Defendant

AFFIDAVIT OF SERVICE OF PROCESS BY

- ☐ **REGISTERED MAIL**
☐ **CERTIFIED MAIL**
☐ **DESIGNATED DELIVERY SERVICE**

G.S. 1-75.10(a)(5), (a)(6); 1A-1, Rule 4(j2)

I, the undersigned, did mail by ☐ registered mail (return receipt requested), ☐ certified mail (return receipt requested),
☐ designated delivery service (delivery receipt requested),
a copy of the summons and complaint ☐ and other document(s) (list) _____

in the above captioned action to (name of person to be served) _____,
addressed as follows: _____

Further, that copies of the summons and complaint ☐ and the above listed other document(s) (check, if applicable) were in fact
received by the defendant on (date of receipt) _____, as evidenced by the attached original receipt.
(Attach original receipt or electronic proof of signature confirmation to this affidavit.)

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Signature Of Plaintiff/Attorney

Date

Signature Of Person Authorized To Administer Oaths

Name (type or print)

Title Of Person Authorized To Administer Oaths

☐ Notary

Date My Commission Expires

SEAL

County Where Notarized