

## Small Claims Mailbox: Questions from Magistrates about Service of Process

Service of process in small claims cases, like many other small claims procedures, requires reference to North Carolina's Rules of Civil Procedure (GS 1A-1) as modified by GS Ch. 7A, Art. 19 (Small Claims Actions in District Court). In today's blog post, I'm going to explore that law by sharing some (lightly edited) email inquiries I've received from magistrates over the last few years. But first, a quick overview of why we care so much about service of process.

As you all know, the legal term for a court's authority to act in any particular case is jurisdiction, and it comes in two flavors: subject matter jurisdiction, which refers to the court's authority to decide this particular kind of case, and personal jurisdiction, which refers to the court's authority over this particular defendant. A court acquires the authority to act with regard to this defendant only if the defendant receives legally adequate notice of the lawsuit and is accorded an opportunity to present a defense. With one big exception discussed later, personal jurisdiction is an all-or-nothing sort of thing: a court either has it or it doesn't, and there are only two ways to get it: either the defendant is served with process, or the defendant makes a voluntary appearance in the case. A small claims defendant may be served with process in several different ways, including service by the sheriff and by certified mail. A voluntary appearance may occur in different ways as well: the defendant may actually show up in the courtroom for trial, or file an answer, counterclaim, or some other response amounting to participation in the case. Any one of these events is sufficient to give the court full personal jurisdiction.

Now, on to some questions:

*I have a question about service on a Complaint for Money Owed case. The defendant is a corporation with an out-of-state address. The plaintiff has filed an Affidavit of Service of Process by Publication. . . needed as two attempts to deliver certified mail were not accepted. Is the publication a legal service if the defendant DOES NOT appear? Is the publication a legal service if the defendant DOES appear?*

This is a great question, because it brings up several important things for magistrates to keep in mind:

- Service by publication is not permitted in small claims cases, except in some circumstances in actions involving a motor vehicle lien. [GS 7A-217](#); [7A-211.1](#).
- A plaintiff who is unable to accomplish service of process except by publication isn't altogether out of luck. Service by publication is often a permissible method of service in trial courts other than small claims. [GS 1A-1, Rule 4\(j1\)](#).
- Voluntary appearance by a defendant is one of the two ways that a court acquires personal jurisdiction over the defendant, and it is a satisfactory substitute for service of process. [GS](#)

[7A-217\(3\)](#).

- A defendant with an out-of-state address raises questions not about service of process, but rather about the mandatory venue rule applicable in small claims court. [GS 7A-211](#) permits a case to be assigned to small claims only if at least one defendant resides in the county in which the case is filed. This is another reason a case otherwise appropriate for small claims might have to be filed in district court instead.
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*The Clerk of Court brought by a lady with a question about whether a private investigator could serve a small claim for money owed. She has hired a PI, and he told her that he would serve the paperwork. Is this a valid service?*

Maybe. [GS 1A-1, Rule 4\(h1\)](#) allows service by a private process server if the plaintiff has previously attempted service “by a proper officer” (that is, by the sheriff) who returned the summons unserved. Note that use of a private process server is NOT permitted in actions for summary ejectment, however, even in the event of an unsuccessful prior attempt at service.

*I know that a registered agent should be served with a lawsuit against a corporation but can the officers be served in lieu of or in addition to the registered agent? In my case the registered agent is now deceased.*

[GS 7A-217](#), titled Methods of subjecting person of defendant to jurisdiction, governs service of process on individuals in small claims cases, but service on business entities such as corporations is governed by the general rules for service set out in [GS 1A-1, Rule 4\(j\)\(6\)](#). A corporation may be served by serving an “officer, director, or managing agent” of the corporation, or by leaving copies in the office of one of these people with the person in charge of the office. The corporation’s registered agent is also a person who may be served, but the law does not require this; persons holding any of the listed positions are equally appropriate for service. The identity and contact information for these individuals is a matter of public record at the [NC Secretary of State’s website](#). The statute also permits a corporation to be served by registered or certified mail or designated delivery service addressed to an officer, director, or managing or registered agent.

*On Friday, the office manager for a company that files numerous eviction notices on a regular basis came to court, and our file showed service by posting, but then she presented a certified mail card showing personal service. Question 1: Does the certified mail card need to be in the shuck before the court date, or can it be presented in court? Question 2: Does sheriff service supersede certified mail service? Question 3: If not, can magistrate award money judgment, based on that certified mail service?*

Again, I like this question because it raises several important issues.

- Many magistrates are unfamiliar with service by certified mail, probably because most folks who file small claims cases don't know that it's available. Such service is authorized both for individuals (GS 7A-217) and corporations (GS 1A-1, Rule 4(j)(6)), and it bypasses the sheriff's office altogether. Service in these cases is proven by affidavit and the signed delivery receipt. There is no requirement that these documents be included in the shuck prior to trial.
- Service by posting in a summary ejectment action presents a unique legal circumstance, in which a small claims magistrate acquires limited jurisdiction to act in a way that affects only the defendant's possessory interest in the posted property. You might think of this as "a little bit of jurisdiction." The court's authority in such a case does not extend to entering a money judgment. The magistrate who asked the question was not so limited, however, because service by certified mail gave the court full personal jurisdiction to award both possession of the rental property and a money judgment.
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