

## Who Can Appear on Behalf of a Party in Small Claims Court?

Established law in North Carolina, and throughout the country, provides that parties to a lawsuit may represent themselves or be represented by an attorney. Representation by anyone else is generally prohibited as the unauthorized practice of law. [GS 84-4](#). In small claims court, there are two exceptions to this general rule, and the specifics about how, whether, and when those exceptions apply are a frequent source of questions that appear in my email in-box. Let's see if we can find a calm, clear space in that jungle!

As is often the case in small claims court, one exception to the general rule is furnished by summary ejectment law. [GS 7A-216](#), which governs small claims procedure related to the small claims complaint, provides that the complaint must be signed "by the party or his attorney, except that [a summary ejectment complaint] may be signed by an agent for the plaintiff." [GS 7A-223](#), titled *Practice and procedure in small claims actions for summary ejectment*, states that "[i]n any small claim action demanding summary ejectment or past due rent or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint."

The literal language of these statutes, referring only to who may sign a complaint, has always seemed to me to be curious wording. Neither statute makes reference to GS 84-4, or even to the provision of legal services other than signing the complaint. In any event, these statutes have long been interpreted to authorize the agent who signs the complaint to appear in court and present the case on behalf of the owner of the rental property. While I might prefer the law to be more specific in its authorization, I must admit that this interpretation makes sense. Landlord-tenant cases make up a majority of small claims cases, and informal observation indicates that the majority of those cases involve rental property being managed by someone other than the owner. A requirement that the owner either personally attend trial or hire an attorney to do so on behalf of the owner would substantially complicate a procedure that the General Assembly has again and again attempted to simplify. Furthermore, given that the primary witness for the plaintiff is likely to be the property manager, such a requirement would have the odd effect of rendering trials for summary ejectment unique in Small Claims Land in routinely requiring the testimony of witnesses other than the parties themselves. And what would be the point of enacting a special rule allowing the agent to sign the complaint if the landlord is still required to appear in court or hire an attorney?

The most reasonable interpretation of these statutes does seem to be that the agent who signs the complaint may also appear in court on behalf of the landlord and present the case. Conceding that, the scope of the exception established by these statutes is still not altogether clear. For example, what if the landlord signs the complaint, but then the property manager appears in court on behalf of the landlord? Does signing the complaint authorize the agent to defend on behalf of the owner against a counterclaim? What sort of "personal knowledge" is required in order for the exception to apply? What if the property management company assumed responsibility for the property last week? What if the company manages hundreds - or thousands! - of rental properties, and no one

employee actually has first-hand knowledge of the details of the rental? These are questions that have not been addressed in North Carolina law, and small claims magistrates are left to do their best to determine the practical application of the statutes.

The second exception to the requirement that a party represent itself or be represented by an attorney was established by [Duke Power Co. v. Daniels, 86 NC App 469 \(1987\)](#), which held that corporate parties may appear in small claims court through an agent. Judge Phillips, writing a two-page opinion on behalf of the Court, said:

*[I]n enacting our small claims court system and in devising the simple forms and procedures that are used followed therein . . . the General Assembly apparently intended, it seems to us, to provide our citizens, corporate as well as individual, with an expedient, inexpensive, speedy forum in which they can process litigation involving small sums without obtaining a lawyer, if they choose to do so.*

In 2002, the Court of Appeals reiterated this rule in [Lexis-Nexis v. Travishan Corp, 155 NC App 205](#). In its opinion, the Court recognized the small claims exception for corporations, but declined to extend the exception to a corporation's appearance in district court by the corporate president and sole shareholder.

There are two questions that commonly arise related to the "corporation exception" in small claims court. First, does the exception apply to other business entities such as a limited liability company or professional association? Second, what constitutes an "agent" for purposes of the exception?

No North Carolina cases have addressed the question whether the corporate exception applies to similar business entities. In my opinion, the exception should apply, because the straightforward logic of Judge Phillip's reasoning in [Duke Power](#) is no less compelling in regard to these businesses. (Obviously, the issue does not even arise in those cases in which the business is a sole proprietorship. In such a situation, the proper party is the individual who owns and operates the business, and who can appear pro se under the general rule.)

Similarly, no case has directly addressed the question of who can appear as an agent for the corporation. It is worthy of note that the agent in [Duke Power](#) was an employee in the utility company's credit department, which suggests that an agent is not required to be an officer of the corporation. A quick survey of other jurisdictions with a similar rule reveals substantial unanimity in allowing a corporate officer or employee to appear. See e.g., [Cleveland Bar Assn. v. Pearlmen, 832 NE2d 1193 \(2005\)](#) (Ohio statute permits "bona fide officer or salaried employee" to represent corporations to limited extent in small claims court); [Babe Houser Motor Co. v. Tetreault, 14 P3d 1149 \(2000\)](#) (Kansas law allows corporate officer or full-time employee, in small claims only).

It's important to note that these are the only exceptions to the general rule requiring parties to appear on their own behalf or be represented by attorneys in small claims court. When a party's spouse or relative appears in court, whether to request a continuance or otherwise represent the

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party's interest, the magistrate should not permit that person to proceed—unless of course the person also happens to be an attorney and is appearing in that role.