

Resources for Older Adults Who Wish to Pursue Civil Remedies

1. Seek advice from and/or representation by an attorney.

An older adult (or someone legally acting on his or her behalf) who is thinking about filing a civil suit may choose to seek legal advice from an attorney. The North Carolina Bar Association has a lawyer referral system that will help older adults find local attorneys with whom they can consult.

N.C. Bar Association Lawyer Referral Service (LRS)*

ncfindalawyer.org

800.662.7660 (toll-free) or 919.677.8574

Note: There is a charge for an initial consultation.

If an older adult cannot afford an attorney, he or she may be eligible for legal services through a local office of Legal Aid, an organization that assists people free of charge with various legal problems, provided they meet certain eligibility guidelines based on household income and type of legal issue involved. Legal Aid maintains a Senior Law Project, which focuses specifically on assisting people age 60 and older. Contact information is provided below.

Legal Aid of North Carolina

Senior Law Project

legalaidnc.org/about-us/projects/senior-law-project

Senior Legal Helpline

877.579.7562 (toll-free)

Monday–Friday, 9–11 a.m. and 1–3 p.m.

2. Use the free court forms provided by the state court system.

A number of forms are available online at no charge from the N.C. Administrative Office of the Courts (AOC) at nccourts.gov/documents/local-rules-and-forms. Using AOC forms is not a legal requirement, but it may help ensure compliance with law and established standards of practice. Using these forms also may help reduce the cost of litigation for an older adult, as the court is often familiar with AOC forms and may be able to process them more efficiently than litigant-drafted documents.

If an older adult (or any other person) is seeking a domestic violence protective order (DVPO) but cannot afford to hire an attorney, under G.S. 50B-2(d) the clerk of superior court of each county in North Carolina must provide the adult with all of the forms that are necessary or appropriate to enable the adult to proceed without counsel. The clerk must also, whenever feasible, provide a private area for DVPO complainants to fill out forms and make inquiries. With one narrow exception, there are no court costs or attorneys' fees assessed in connection with filing for a DVPO.

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3. Petition to sue as indigent.

While a person seeking a DVPO will not be assessed court costs or attorneys' fees, as mentioned above, for other civil matters a judge or clerk may authorize the person filing the claim to sue as indigent in the appropriate court under G.S. 1-110(a). To sue as indigent, a person must file an affidavit with the court stating that he or she is unable to advance court costs. Typically, a person filing an action who is seeking an indigency classification will use the AOC's Form "Petition to Proceed as an Indigent" (G-106). The clerk of superior court must authorize a person to sue as indigent if the person makes the required affidavit and

- receives electronic food and nutrition benefits, such as those offered through the Supplemental Nutrition Assistance Program (SNAP/food stamps);
- receives Work First Family Assistance, such as Temporary Assistance for Needy Families (TANF);
- receives Supplemental Security Income (SSI); or
- is represented by a legal services organization, such as Legal Aid of North Carolina, that has as its primary purpose the furnishing of legal services to indigent persons or by private counsel working on behalf of such an organization.

For all other persons, it is up to the discretion of the judge or the clerk whether to authorize a person to sue as an indigent based on the information presented in the affidavit.

4. Seek recovery of attorneys' fees.

The default rule in North Carolina is that each party to a civil action is responsible for his or her own attorneys' fees. But there are exceptions to this rule. For example, where specifically authorized by statute, a court may award reasonable attorneys' fees to one party as costs taxed against the other party. This exception permitting the recovery of attorneys' fees applies to some of the civil actions referenced in this chapter, including:

- actions for the recovery of personal property (see Section II.C.1.b.i.(b) of the *Legal Framework for North Carolina's Elder Protection System*),
- claims for unfair and deceptive trade practices (see Section II.C.1.b.ii.(e) of the *Legal Framework*), and
- claims for rescission of a deed (see Section II.C.1.b.iii of the *Legal Framework*).