

INTRODUCTION TO SMALL CLAIMS COURT

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INTRODUCTION

The Cobb County Magistrate Small Claims Court handles money claims under \$15,000.00. A Magistrate judge holds an informal hearing to listen to and decide each case. Any person may file a claim in Magistrate Court without an attorney. You may have an attorney represent you if you choose, at your own expense. The court does not appoint attorneys for civil cases. Either a person or a business may be sued (See "To Sue Or Not To Sue", for suing a business).

Below are examples of typical lawsuits filed in the Magistrate Court:

- * Mr. Smith bought a TV from a local store. The next week the set would not work. The store refused to give him a new set or his money back.
- * Ms. Jones paid a security deposit when she moved into her apartment. Although she complied with the lease and did not damage the apartment, her landlord will not return the security deposit.
- * Mr. James was fired from his job. He claims the company owes him one week's pay. The company will not pay him.

In each example, a person can file suit and ask for money damages.

TO SUE OR NOT TO SUE?

The first step is deciding whether to sue. Remember, you must prove that the person or business you are suing owes you something. Do you have proof of the debt such as a receipt, note, bill of sale, warranty or a witness? In deciding to sue, consider whether you have any evidence. In addition, if you sue an individual they must be a resident of Cobb County. If you sue a corporation the business must be in Cobb County or the registered agent for the corporation must be located in Cobb County. Or, if you sue a sole proprietor of a business, the sole proprietor must be a resident of Cobb County. This office cannot advise you on who to sue or if you have a good claim.

HOW TO FILE

To begin the process of filing a small claims case, you must first fill out a Statement of Claim Form and a Sheriff's Entry of Service Form. On these forms, you will put the name and address of the person or corporation you are suing, state the exact amount of money you are suing for and explain why you are suing. You may represent yourself, act as an agent for your corporation, or you may sue on behalf of a minor should you be the guardian. However, you cannot represent someone else if you are not an attorney. In addition, you must put your name, mailing address, and telephone number on the claim form. This is important because the clerk will use this address to send you notice of the date and time when your case will be heard by the Magistrate. Your case may be dismissed if the court cannot locate you. In order for the court to pass judgment in your case, you have to sue the correct entity (i.e., person, corporation). The person you sue is called the "defendant." If the defendant owns a business which is not incorporated, and your claim is against the business, you may sue the person and the trade name he or she does business under in the county where the owner resides, regardless of where the business is located (i.e., John Doe d.b.a. John's Grocery). You can usually find out the exact trade name as it is registered through the Cobb County Superior Court Clerk's office, 1st floor, 10 E. Park Square, Marietta, Georgia. You can personally go to the record room and look up this information. If the defendant is a corporation, you must sue the corporation itself, rather than someone who works for the corporation. Remember, you must sue a corporation in the county where it is doing business or where it is incorporated. You may also sue a corporation in the county where the registered agent is located. (The registered agent is the party that should be served for the corporation). To verify if a business is incorporated and to obtain the registered agents name and address for the corporation, contact the corporation's listing office of the Secretary of State (404) 656-2817. This information can also be obtained on the website www.Georgiacorporations.org

WHERE TO FILE

You may personally file or mail the claim form to the Magistrate Court of Cobb County, located on the 3rd floor of the Public Safety Building, 32 Waddell Street, Marietta, GA 30090. Claims against defendants residing outside the State of Georgia are usually filed in the state where the defendant is located. You should consult an attorney regarding these cases.

FILING FEE

If you are suing someone you must pay a filing fee and a service fee. The fee for filing a

claim is \$47.00. In addition, the sheriff's service fee is \$25.00 per defendant (Example: you sue one defendant – the cost is \$72.00; two defendants – the cost is \$97.00).

We do not accept personal checks. We accept cash, money orders, business checks, visa, and mastercard.

NOTICE TO DEFENDANT

The sheriff will serve the defendant a copy of the complaint and summons that has been filed. The papers will inform the defendant of the nature of your suit. The defendant has thirty (30) days from the date that he or she is served with the complaint to answer the complaint.

If the defendant fails to file an answer to the complaint within thirty days, law does permit the defendant an additional fifteen (15) days where they are in default (totaling 45 days.) In order to respond after the initial 30 days, the defendant must pay court cost unless they are admitting the claim. Each defendant must pay costs which totals the same costs the plaintiff paid when filing the complaint (see above Filing Fees). If the defendant answers the claim, the clerk will notify all parties and their attorneys of the trial date by regular mail.

COUNTERCLAIMS

The defendant is allowed to file a counterclaim against the plaintiff. If the defendant makes such a claim, it must be stated in the answer that is filed. A copy of the answer/counterclaim will be mailed to the plaintiff. The plaintiff does not have to answer a counterclaim until the actual court hearing. If the defendant's counterclaim is for more than \$15,000.00 in actual damages, the case may be transferred to the State Court of Cobb County.

PREPARING FOR TRIAL

Although the Magistrate Court is a people's court, rules of evidence still apply when presenting a case. The court will not accept affidavits or letters, which are considered "hearsay." Estimates of repair bills without the maker of the estimates are not accepted. You must have the maker of any documents in court in order to offer them into evidence. In some cases you may need to seek the advice of an attorney in order to submit your evidence. The judges or clerk of this court cannot tell you how to try your case, however, the clerk can assist you in preparing your paperwork. While waiting for trial you should gather all your documents (receipts, repair bills, warranties, etc.) and have them ready. If you have witnesses you should notify them of your court date. Should a witness refuse to come to court you may have the clerk issue a subpoena for their appearance. To do this you must go to the Clerk of Magistrate Court and tell them the name and address of your witness. If the witness resides outside of Cobb County, ask the clerk for a copy of the law on issuing subpoenas.

SETTLEMENTS OUT OF COURT

The legislature requires the court (judge) to have the parties attempt to negotiate a settlement one more time before the hearing. If a settlement is reached in your case, the terms of the

agreement should be put in writing unless requested by the court. However, you are not required to submit those terms to the court. If those terms are not submitted, a dismissal without prejudice should be filed immediately with the Clerk of Court. If you settle your case and the defendant is willing to pay you on a weekly, bi-weekly or monthly basis, and this arrangement is acceptable to you, you should ask the clerk for a consent judgment form. This form will enable you to put the terms of the agreement in writing with both parties' signature and the judge's signature. If the defendant does not work, have money or assets, you may not be able to collect on your judgment. The court cannot force the defendant to pay the monies owed.

THE TRIAL

Civil trials are held every Monday at 9:00 am and 1:30 pm, and Thursday at 6:00 p.m. on the 3rd floor of the Public Safety Building (calendars are posted outside the courtroom). It is very important to appear on time with all necessary evidence and witnesses. If you appear late, or if you fail to appear, you may automatically lose your case. When your case is called, the court will inquire as to the length of time it will take to present your case and how many witnesses will testify on your behalf. Your testimony is usually essential in proving your case. After the court calls the calendar and determines the length of each case, the parties are excused for a few minutes to attempt to negotiate a settlement before the judge hears the case. You should make an earnest attempt in reaching a settlement. Remember, you are the one most familiar with your case, not the judge. It would be more conducive to reach a settlement on your own, rather than to have the judge make a decision that is not in your favor. The plaintiff has the burden of proving to the court the liability of the defendant and the amount of damages claimed. Therefore, the plaintiff will have the first opportunity to present his/her case, as well as present any evidence or witnesses on their behalf. After each of the plaintiff's witnesses have testified, the defendant may question the witnesses regarding his/her testimony. After the plaintiff presents his/her case, the defendant may then present evidence and testimony to support his/her case. The plaintiff may question the defendant and his witnesses regarding their testimony. Remember, you must ask questions and do not make statements or be argumentative, even if you do not agree with the testimony. After all the evidence has been presented, the court will consider all the relevant evidence and make a decision. Once the judge has made a decision, the clerk will prepare the judgment in writing, the judge will sign the judgment and you will be given a copy of the judgment. This is usually upon completion of the case. If not, a copy will be mailed to you the next day.

DEFAULT JUDGEMENTS

If the defendant does not answer the complaint within 45 days from the date of service and the damages are liquidated (i.e., note, account), a judgment may be rendered without having the parties appear in court. If a court hearing was scheduled and the defendant fails to appear, the plaintiff may automatically receive a judgment. In both cases, this is called a judgment by default. If the plaintiff receives a judgment by default it is usually for the full

amount of the suit plus the court costs paid to initiate the action. If the claim is for unliquidated damages (i.e., auto-accident), the plaintiff will have to prove the amount of damages in court to receive a default judgment.

APPEALS

Both parties have the right to appeal the decision of the Magistrate. If you think the Magistrate has made the wrong decision, you may appeal to the State or Superior Court. Appeals must be made within thirty (30) days from the date of the judge's decision. If the defendant files the appeal he/she would be required to pay court costs. The cost would be the same cost paid by the plaintiff at the time action was filed. The plaintiff would not incur any additional costs to file an appeal. There is no appeal for a default judgment.

COLLECTING THE JUDGMENT

In many cases collecting the judgment is harder than proving a case in court. **THE COURT DOES NOT COLLECT THE JUDGMENT FOR YOU.** If you receive a judgment and you are not voluntarily paid, there are several methods of collection the law provides (provided that the party is not indigent). Upon receiving a judgment from the court the following methods of collection are available to you:

- a. You may request that the court issue a Fieri Facias (fifa). The fifa, (proof of your judgment) once issued, places a lien against the losing party and any real property (land) he/she may own. The cost for issuing and recording the fifa on the General Execution Docket is \$4.00. You may also take the fifa and have it recorded in any county in Georgia. If you need to record the fifa outside the State of Georgia, you should consult an attorney.
- b. You may file a garnishment against wages or a bank account. In Cobb County, garnishments are filed through the State Court and the Magistrate Court clerk's offices. For information regarding these proceedings, please call (770) 528-6989 for Magistrate Court and for State Court (770)528-1218. Garnishments filed against wages are filed in the county where the defendant is employed. Garnishments filed against a bank account should be filed in the county where the bank is located. When filing a garnishment in Magistrate Court, you must provide a copy of your judgment.
- c. You may also levy against real and personal property. This process is started by having the clerk issue a fifa. Since the fifa is proof of having a judgment, the sheriff will require the fifa to levy against any personal property. If you want to levy against real property you should contact an attorney for the procedure.
- d. You may also elect to turn your judgment over to an attorney or a collection agency for collection.

WHAT IS MEDIATION?

Mediation is a process in which a neutral third party, or mediator, facilitates settlement discussions between the individuals in conflict. The mediator attempts to focus the attention of

the parties upon their needs and interests rather than upon rights and positions. Any settlement is entirely voluntary. If the parties do not reach a settlement through mediation, the parties retain their right to take their conflict before a judge.

WHAT ARE THE BENEFITS OF MEDIATION?

Mediation allows you to control your own dispute and resolve the problem yourself, rather than having a judge decide it for you. Mediation is also fast and cost effective. There is no additional cost to participate in the mediation program. In a mediation session, everyone has the opportunity to voice their concerns and the privilege of speaking without interruption. Mediation encourages the parties to develop alternative ways of solving the issues at hand.

WHAT IS THE MEDIATOR'S ROLE?

The mediator helps parties involved in a dispute talk to each other and reach an agreement that is satisfactory to both parties. The mediator manages your mediation session and facilitates the parties in reaching the solution; however, the parties retain the ultimate decision-making power. The mediator has a duty to the parties to remain neutral, unbiased, and to act in good faith. The Magistrate Court Mediation Program enlists the help of trained, state registered, volunteer mediators.

CONFIDENTIALITY OF MEDIATION

Information gathered in the mediation process is confidential and privileged. Any information pertaining to the actual content of the case will not be discussed with anyone outside of the mediation session. However, procedural issues may need clarification from the Mediation Office. The parties will not disclose any information about the content of the mediation without the approval of the mediator and the other party or parties.

Court personnel or other observers will be held to the same level of confidentiality as is required of the mediator and the parties themselves. Mediation coordinators may be present strictly for the purpose of upholding the high standards of the mediation program and will in no way be reporting the contents of the mediation to any judicial officer.

HOW ARE MEDIATIONS SCHEDULED?

If the parties agree to have their case mediated, the program coordinator would schedule the mediation session. Mediation sessions are scheduled Monday through Friday, between the hours of 8:30 am and 2:30 pm. For more information regarding the mediation process or to schedule mediation, please contact the Mediation Office at (770) 528-8935.

IMPORTANT THINGS TO REMEMBER

1. If you are involved in a small claims suit and your address changes, you should notify the clerk in writing of your new address. (The court notifies you of your court date by regular mail.)
2. The Magistrate Court was designed for you to represent yourself. However, you may have an attorney represent you.
3. Once a court date has been set by the clerk, continuances are granted by consent of both parties only or for legal causes only.
4. It is very important that the correct party is sued. If there are any doubts as to who you should sue, you should consult an attorney.
5. The clerk cannot give advice on who to sue. The clerk can help with filling out the necessary forms.
6. The court cannot force the losing party to pay. Keep in mind, you may not be able to collect on the judgment.
7. Finally, it is important to remember that you have been given basic information for suing in the Magistrate Court. Some cases require more detailed instructions and preparation than what you may have read. If you have any questions that do not require legal advice, the clerk will be happy to assist you. The clerk can be reached at (770) 528-8910, Monday through Friday, between the hours of 8:00 a.m. to 5:00 p.m.

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