

INTRODUCTION TO SMALL CLAIMS COURT

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INTRODUCTION

The Fannin County Magistrate Small Claims Court handles money claims up to \$15,000.00. A Magistrate Judge holds an informal hearing to listen to and decide each case. Any person may file a claim in the Magistrate Court without an attorney. You may have an attorney represent you, if so; this would be 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).

TO SUE OR NOT TO SUE?

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

HOW TO FILE A SMALL CLAIMS CASE

To begin the process of filing a small claims case, you must fill out a “Statement of Claim” form. On this form, you will state the name and address of the person or corporation you are suing, state the exact amount of money that 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 child if you are the guardian. However, you cannot represent someone else if you are not an attorney. In addition, you must state 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 the Magistrate will hear your case. 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, etc.). The person you sue is called the “Defendant”. If the Defendant owns a business which is not incorporation, 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 dba John’s Grocery). If the Defendant is a corporation, you must sue the corporation itself, rather than someone who works for the corporation. Remember that you must 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 listing office at the Secretary of State (404) 656-2817 or go to their website at <http://sos.ga.gov/>.

WHERE TO FILE

You may personally file or mail the claim form to the Magistrate Court of Fannin County, located at 400 West Main Street, Suite 202 Blue Ridge, Georgia 30513. Also, you can file some claims online at www.efilegeorgia.com. Claims against defendants residing outside the State of Georgia are usually filed where the Defendant is located. You should consult an attorney regarding these types of cases.

FILING FEE

If you are suing someone you must pay a filing fee and a service fee. The filing fee for filing a claim is \$56.00. In addition, the Sheriff; at a service cost of \$50.00 must serve each defendant. Therefore, the total cost to sue one defendant is \$106.00, and for each additional defendant who has to be served, add an additional \$50.00 Sheriff’s service fee.

NOTICE TO DEFENDANT

The deputy will serve the defendant a copy of the complaint and summons that has been filed. The papers will inform the defendant the nature of your suit. The defendant then has thirty (30) days from date that he or she was served with the complaint in which to answer the complaint. If the defendant fails to file an answer to the complaint within thirty (30) days, Georgia law does permit the defendant an additional fifteen (15) days in which he or she can file an answer (by re-opening the case). If the defendant answers the claim, the clerk will notify all parties or 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 Superior Court of Fannin County.

PREPARING FOR TRIAL

Although the Magistrate Court is the ‘people’s court’, rules of evidence still apply when presenting a case. The court will not accept affidavits or letters, which are considered “hearsay”. It is best to have the creator 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 and / or Clerks of this court cannot tell you how to present your case; however, the clerk can assist you in preparing your paper work. 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.

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 interest 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 IS THE MEDIATOR'S ROLE?

The mediator helps parties involved in a dispute talk to each other and reaches 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 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 will in no way be reporting the contents of the mediation to any judicial officer.

SETTLEMENTS OUT OF COURT

The legislature requires the Court (Judge) to have the parties attempt to negotiate a settlement before the hearing. If a settlement is reached in your case, the terms of the agreement should be put in writing. You do not have to submit those terms to the court, unless requested by the court. However, if those terms are not submitted, a dismissal should be filed immediately with any clerk in the Magistrate 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 with 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 party's signature and the Judge's signature. If the defendant does not work nor have any 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

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 you to present your case and how many witnesses will testify on your behalf. Your testimony is usually essential in proving your 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 of 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 their case, as well as present any evidence or witnesses on their behalf. After each of the plaintiff's witnesses has testified, the defendant may ask the witnesses any questions pertaining to their testimony. After the plaintiff presents their case, the defendant may then present evidence and testimony to support his or her case. The plaintiff may also ask the defendant and his witnesses questions relative to their testimony. Once the Judge makes a decision, a judgment will be prepared and a copy will be given or mailed to you.

DEFAULT JUDGMENTS

If the defendant does not answer the complaint within forty-five (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 in order to receive a default judgment.

APPEALS

Both parties have the right to appeal the decision of the Magistrate Judge. If you think the Magistrate has made the wrong decision, you may appeal to the Superior Court. Appeals must be made within thirty (30) days from the date of the Judge's decision.

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 that 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), which once issued, places a lien against any property that the defendant may own. The cost for issuing and recording the FiFa on the General Execution Docket (G.E.D.) is \$9.00. 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. 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. The filing fee for a garnishment is \$106.00.
- c. You may also levy against real and personal property. Having the Clerk issue a FiFa starts this process. A recorded FiFa empowers the Sheriff of the County, in which it is recorded, to levy on any personal property of the Defendant. If you want to levy against real property, you should contact an attorney for the procedure.
- d. You may also file post-judgment interrogatories to learn of the defendant's assets, place of employment and other information that may be helpful to you in trying to collect your judgment. Interrogatories filing fee is \$12.00 (includes serve by certified mail only), for personal service you must pay an additional \$50.00. Interrogatories with a judgment from another county filing fee is \$106.00 (includes personal service by the Sheriff's Office).
- e. You may also elect to turn your judgment over to an attorney or a collection agency for collection.

IMPORTANT THINGS TO REMEMBER

- If you are involved in a small claims case and your address changes, you should notify the Magistrate Court, in writing of your new address. The court notifies you of your court by regular mail.
- The Magistrate Court was designed for you to represent yourself; however, you can have an attorney represent you, if you choose.
- 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.
- The clerks cannot give advice on whom to sue. The clerk can assist with filling out the necessary forms, but not give any legal advice.
- The Magistrate Court cannot force the losing party to pay. Keep in mind; you may not be able to collect on the judgment.
- Finally, it is important to remember that you have been given the basic information for suing in the Magistrate Court. Some cases may require more detailed instructions that you may have read. If you have any questions, that do not require legal advice, the clerks will be happy to assist you.

Fannin County Magistrate Court
Brian D. Jones, Chief Magistrate Judge

Hours: Monday through Friday
9 a.m. to 5 p.m.

400 West Main Street
Suite 202
Blue Ridge, Georgia 30513

706-632-5558 (phone)
706-632-8236 (fax)