

## **WORTH COUNTY MAGISTRATE COURT**

### **DIRECTIONS FOR SMALL CLAIMS - PLAINTIFF**

**This pamphlet is for the person or entity filing the lawsuit. You are the Plaintiff. The person you are suing is the Defendant. As the Plaintiff, you are responsible for how this matter moves through the court process.** You must identify the correct Defendant, file the action, and serve the Defendant properly. The Defendant may choose to: 1) answer, 2) answer and file a counterclaim or 3) not answer. After completing your part, the court will schedule your case based on the Defendant's response.

#### **THE BASICS**

Before the court can hear your small claims case, the case must meet certain **jurisdiction** and **venue** requirements. Jurisdiction limits the Court's authority to hear the case and Venue ties the parties to the case and where they must be served.

The Court can hear civil cases where the amount of the dispute is **\$15,000.00 or less**. Where you file depends on the type and location of the Defendant:

If an individual, you must file in the county where the Defendant lives.

If Defendant is a company, you must file the claim in the county of the registered agent of the company. To locate the registered agent, contact the Corporations Division of the Georgia Secretary of State at 404-656-2817 or [www.sos.ga.gov](http://www.sos.ga.gov).

Notices must be sent directly to the Defendant, unless the Defendant is a corporation.

If Defendant is an unincorporated business, the claim must be filed in the county where the business is physically located.

If Defendant is a partnership, the claim can be filed in the county in which at least one of the owners' lives.

#### **E-FILING**

The Court does not accept electronically file (E-File) documents at this time. The forms required can be obtained in the Magistrate Clerk's office or on the County's website at [www.worthcountyboc.com](http://www.worthcountyboc.com).

#### **SMALL CLAIMS PROCEDURE**

##### **Step 1: File Statement of Claim**

Plaintiff begins the lawsuit by filing a sworn **Statement of Claim or Complaint**.

The Statement of Claim or Complaint must include the full name and address of the Defendant(s), as well as the reason for the lawsuit, and the damages claimed. You must attach a copy of all documents which support your claim (contracts, receipts, cancelled checks, etc.).

If you write your own Complaint, you must attach a **Notice and Summons** form.

The Statement of Claim must be notarized with a signature and seal OR its content sworn and affirmed by a deputy clerk.

There is a fee to file your action. Please see the court's website for filing fees.

The Court offers **Free Form Generator**, at [www.georgiamagistratecouncil.com](http://www.georgiamagistratecouncil.com) an interactive website to help guide you in writing your statement of claim or answer.

##### **Step 2: Service of Process**

You must notify each Defendant of the lawsuit. You must serve a copy of the Statement of Claim or Complaint on each Defendant. If there are multiple Defendants, each must be served separately.

Either the Sheriff's Department or a court-approved process server must serve (or deliver) the lawsuit.

The fee varies depending on the service you use.

##### **Step 3: Defendant's Answer**

The Defendant has 30 days from the date of being served to file an Answer.

If the Defendant files a counterclaim (a claim against you), you must file an Answer within 30 days.

#### **Step 4: Default**

If the Defendant fails to file an Answer within 30 days, the case goes into default. If the case remains in default after 45 days from when the Defendant was served, you may be entitled to a Default Judgment.

The Court may schedule a hearing to determine the amount of money owed. However, if sufficient evidence is included with your Statement of Claim, the Court may enter judgment without a hearing.

To request a Default Judgment, you must file a **Request for Default** with an **Affidavit of Non-Military Service**, showing that the Defendant is not serving in the military.

#### **Step 5: Mediation**

Mediation is an option for both parties and allows you to direct the outcome of the case by working with a neutral third person. If an agreement is reached, the case ends.

The Court offers mediation services through the Tifton Judicial Circuit ADR. Parties can request a referral for a mediation session, additional fees may apply. If the parties cannot reach agreement, the case goes to trial.

#### **Step 6: Getting Ready for Trial**

Trial is an opportunity for both parties to present evidence to a judge. Evidence may be presented to the court through documents or witness testimony.

##### **Documents**

Bring copies and originals of all documents which support your position to court. These may include contracts, work orders, service records, receipts, and cancelled checks. Keep the originals for your files.

It is a good idea to bring extra copies of documents for the Court, any witnesses and the opposing party.

##### **Witnesses**

Witnesses may give testimony at the hearing to help prove your claims, defenses or the extent of damages sought.

Expert witnesses are recommended for evidence that requires scientific, technical or other specialized knowledge.

To require a witness to attend the hearing, go to the Clerk's office or to the Court's website to obtain a **Request for Subpoena** form. The subpoena must be served or delivered to the witness.

You may serve the subpoena through the Sheriff or an approved private process server. Fees vary.

##### **Hearsay Evidence**

Hearsay is evidence not based on direct personal knowledge or experience and is generally not admissible at trial.

The Court cannot consider any statements (written or oral) of any person not present at trial. The person must appear in person to testify so that the opposing party can cross-examine (question) them. There are, however, limited exceptions when such evidence will be allowed.

#### **Step 7: Trial**

Arrive early. Immediately before court starts, the Judge will call the calendar. This lets the court know who is present. Parties who miss the call of their case or name run the risk of having their case dismissed or a judgment entered against them.

Parties may have an opportunity to mediate on the day of trial.

Parties must exchange copies of documents to ensure each side is aware of the evidence that will be presented.

As the Plaintiff, you present your case first. You have the burden of proving your case by a "preponderance of the evidence." In order to prevail, you must prove the greater weight of the evidence is in your favor.

Once you complete your presentation, the Defendant presents its defense. Both parties may cross-examine (question) the opposing party and any witnesses.

If a counterclaim was filed, it will be heard following or with the initial case.

At the end of the trial, each party may offer a closing argument to summarize the facts in their favor.

Following the presentation of evidence, the Judge will decide the case and issue a ruling. The Judge will let the parties know when the written order will be available.

### **Step 8: Appeals**

A Party dissatisfied with the judgment of the Court may appeal the decision to either the State or Superior Court by filing a **Notice of Appeal** with the Clerk no later than 30 days after the judgement is entered. The Notice of Appeal form can be found on the Court's website or in the Clerk's office.

The appealing party must send a copy of the Notice of Appeal to the opposing party and pay the filing fee within 20 days to the reviewing Court, which will hear the appeal.

### **RESOURCES-HELPFUL TOOLS**

**The Judges and staff of the Magistrate Court cannot provide legal advice.**

Instead, try these:

**Law Library**, located on the 1st Floor of the Courthouse in the Probate Court Office, offers a place to conduct legal research and find information to assist with your case.

**The Uniform Magistrate Court Rules** accessed through the Georgia Judicial Gateway's website [www.georgiacourts.gov](http://www.georgiacourts.gov).

**Georgia Legal Aid ([www.GeorgiaLegalAid.org](http://www.GeorgiaLegalAid.org))**

**DISCLAIMER: The information in this pamphlet is not legal advice. It is intended to give a general overview of the procedures and forms used in the Worth County Magistrate Court. We always suggest that litigants consult with an attorney if they have any questions about what they should do or questions specific to their case.**