

## **WORTH COUNTY MAGISTRATE COURT**

### **DIRECTIONS FOR SMALL CLAIMS - DEFENDANT**

**This pamphlet is for the person or entity against whom a case has been filed. You are the person being sued and are known as the Defendant. The person suing you is known as the Plaintiff.** As the Defendant, you have several options. You may:

1. File an answer, and go to trial;
2. File an answer and mediate to reach an agreement with the Plaintiff;
3. File a counterclaim with your answer; and/or
4. Fail to answer and be subject to default.

You must decide which choice works best for you. To get started, you need the correct form. Small claim forms are in the Magistrate Clerk's office, and on the County's website at **[www.worthcountyboc.com](http://www.worthcountyboc.com)**.

#### **THE BASICS**

Before the court can hear a small claims case, the case must meet **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 the Plaintiff files depends on the type and location of the Defendant:

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

If Defendant is a company, Plaintiff 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 Plaintiff must file 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 sworn **Complaint**. This is the form where the Plaintiff tells the Court and Defendant the reason for the lawsuit.

There is a fee to file the action. The fees are listed on the court's website.

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 answer.

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

Plaintiff must notify the Defendant by serving a copy of the Statement of Claim or Complaint on the Defendant.

This notice must be served or delivered by the Sheriff's Department or by a court-approved process server.

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

In the **Answer**, the Defendant must admit or deny each of the plaintiff's allegations or claims and list any defenses.

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

The Answer must be notarized with a signature and seal OR sworn and affirmed by a deputy clerk.

You are not required to file a counterclaim, but you should file an answer if you want to defend yourself.

The **Counterclaim**, if any, must not be more than \$15,000 and will be heard at the same time as the plaintiff's claim.

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

If the Defendant fails to file an Answer within 30 days, the case goes into **Default**. The Defendant can bring the case out of default status by filing an Answer and paying Court costs within 15 days of the case goes into default.

If the case remains in default after 45 days from the date the Answer was initially due, the Plaintiff is 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 the Statement of Claim, the Court may enter judgment without a hearing.

#### **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 a hearing where both parties 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.

The Plaintiff presents its case first. The Plaintiff has the burden of proving its case by a "preponderance of the evidence." In order to win, the Plaintiff must prove the greater weight of the evidence is in their favor.

Once the Plaintiff completes its presentation, the Defendant presents its defense. Both parties may cross-examine 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 where the parties 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.**