

Frequently Asked Questions Concerning Small Claims

Can I file my case in the Magistrate Court?

The Magistrate Court of Pickens County is also referred to as small claims court. You can file a claim for which you are seeking \$15,000.00 or less. If your claim exceeds \$15,000.00 principal, the Magistrate Court does not have jurisdiction (the legal authority) to hear your case, and it must be filed in another court; such as, State Court or Superior Court. This limit applies to both the claim of the Plaintiff and any counterclaim of the Defendant. Interest and court costs do not affect the jurisdictional amount.

Are there any types of cases that cannot be filed in Magistrate Court?

Certain types of cases cannot be filed in Magistrate Court, regardless of the amount in recovery being sought, such as, divorce and family matters and any case in which the Court would be called upon to decide who is the legal owner of real estate. Furthermore, the Magistrate Court cannot issue an injunction, which is an order directing a party to take some action such as repairing or returning property.

Who may file a claim or have a claim filed against?

The party who files a claim is referred to as the "Plaintiff." The party who is sued is referred to as the "Defendant." A claim must designate the proper Plaintiff(s) and Defendant(s). The determination of the proper party will depend on whether the party is a person or a business and how that business is set up. Failure to name the proper parties may result in an unsatisfactory judgment.

Individuals - If the party is a person, you should designate that party by his or her legal name.

Minors - If the party is a minor (under the age of 18), the proper party depends upon whether the minor is the Plaintiff or the Defendant. A minor may not be a Plaintiff directly, but must be sued through the minor's parent or legal guardian. Example: "John Doe, a minor, by Joe Doe, next best friend." A minor may be sued directly or through the minor's parent or legal guardian.

Businesses - If the party is a business, you must name the proper legal entity. The proper legal entity is determined by how the business is set up. You can contact the Georgia Secretary of State at (404) 656-2817 to get information on a corporation. You can also check with the Pickens County Business License Office (706) 253-8809 to find out who owns the business.

Sole Partnerships - A sole proprietorship is a business owned by one person that is not in the form of a corporation. The person may or may not use a trade name in the operation of the business. In either case, the proper party is the individual owner. Example: "John Doe, individually and d/b/a John's Garage."

Partnership - A partnership is a business owned by two or more persons that is not in the form of a corporation. The proper parties are the actual partners. Example: "John Doe and Jane Doe, individually and d/b/a John's and Jane's Garage."

Corporation - A Corporation is a legal entity separate and distinct from its owners. The proper party is the legal name of the corporation. Example: "John's Garage, Inc." You can obtain information on a corporation from the Georgia Secretary of State by calling (404) 656-2817. You should determine the correct legal name of the corporation, the County in which its registered office is located, and the name and address of the Registered Agent.

Where should I file my case?

You must file your case in the County in which the Defendant (the party you are suing) resides. This requirement is referred to as "venue."

Individual - For an individual, venue is the County of the person's legal residence.

Businesses - The type of business determines the proper venue for a business named as the defendant. For a sole proprietorship, the suit should be filed in the county in which the owner of the business resides. For a partnership, the suit should be filed in the county in which at least one of the owners resides. For a corporation, the suit should be filed in the county where the corporation has designated its registered office with the Secretary of State's Office.

Multiple Defendants - For multiple defendants, you can file your case in any County in which venue would be proper for at least one of the defendants, if they are jointly and severally liable.

What happens if I file a case in the wrong court?

If you file a case in Magistrate Court over which the Court does not have jurisdiction or where venue is improper, the case will be transferred to a court that does have jurisdiction. An order will be entered transferring the case to the appropriate court. The order may contain a requirement that you pay a transfer fee within twenty (20) days.

How do I file my case?

To start the process of filing a small claims case, you must first fill out a Statement of Claim Form. On this form, you will enter 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. Remember that 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.)

How much does it cost to file a case?

If you are suing someone, you must pay a filing fee and a service fee. Court costs are county specific. The Office of the Sheriff must serve the Complaint and Summons. (Example: sue one Defendant - you pay one filing fee and one service fee; two Defendants - you pay one filing fee and two service fees, etc.). At the Judge's discretion, if you win the case, the defendant typically reimburses the court costs.

Filing fees are set forth by the Georgia State Legislative body and are subject to change. See the link on this website to check the most current filing fees.

How does the defendant know that he or she is being sued?

The Office of the Sheriff will serve the defendant(s) a copy of the complaint and summons that has been filed. These papers will inform the defendant of the nature of your suit. The defendant has thirty (30) days from the 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 days, the law provides the defendant an additional fifteen (15) days in which to file an answer by paying all court costs along with the answer (totaling 45 days). If the defendant answers the claim, the Clerk will notify all parties and their attorneys of the trial date by regular U.S. mail.

What happens after the defendant is served with the Statement of Claim?

The defendant has thirty (30) days from the date of service to file an answer with the Court. The day after the date of service is counted as day one. If the thirtieth (30th) day falls on a day when the Court is closed (a weekend or legal holiday), then the answer is due on the next day the Court is open.

Can the defendant file a late answer?

On the thirty-first day after service on the defendant, the case goes into default. However, the defendant has additional fifteen (15) days to open the default by filing a late answer and paying all court costs along with the answer. No Answer may be filed beyond the forty-fifth day following service.

How does the plaintiff know that an answer has been filed?

The defendant must serve a copy of the Answer on the Plaintiff. Either personal delivery or first class U.S. mail may be used to file an Answer and all subsequent pleadings (court filings).

What happens after the defendant has filed an answer?

Once the defendant files an Answer, the Court will schedule the case for trial within a few weeks. All parties will receive notice by regular U.S. mail notifying them of the date and time of the trial.

I have been sued, what should I do?

Seeking legal advice is a good decision. You may also read books on representing yourself in court. If you elect to represent yourself, you are responsible for filing an Answer with the Court within thirty (30) days of being served. The day after the date of service is counted as day one. If the thirtieth (30) day falls on a day when the Court is closed (a weekend or legal holiday), then the answer is due on the next day the Court is open. You must serve a copy of the answer on the Plaintiff by either personal delivery or first class U.S. mail.

I missed the time to file an answer. Can I file a late answer?

On the thirty-first day after service, the case goes into default. However, the defendant has an additional fifteen days to open the default by filing a late answer and paying all court costs along with the answer. An answer will not be accepted beyond the forty-fifth day following service.

The party who sued me actually owes me money. What can I do?

Along with your answer, you can file what is called a counterclaim, which is essentially, a Statement of Claim filed by the defendant against the plaintiff. (See the information on Statement of Claim, above.) If your counterclaim exceeds the jurisdictional limits of the Magistrate Court, the case will be transferred to a court that has proper jurisdiction. Usually the entire case will be transferred. However, there may be some cases where the plaintiff's claim will remain in Magistrate Court and the defendant's counterclaim will be transferred separately.

Is there a cost to filing an answer or a counterclaim?

No. The plaintiff pays court costs when the case is filed. However, the defendant may be ordered to pay these costs to the plaintiff if the Plaintiff wins his or her case.

What do I bring to court?

You should bring all persons who have direct knowledge of the facts related to your case and any documents, photographs, repair bills, receipts, samples, or other physical evidence which you feel would help the Court better understand your case.

Can I bring letters or affidavits from witnesses to the court?

No. Live witnesses who have direct knowledge of the facts to which they testify must present all testimony. If the witness is not physically present in court, under oath, and subject to cross

examination, their statements may not be presented to the Court. To do otherwise would violate the Georgia law against "hearsay" evidence.

How do I make witnesses come to court?

You can compel a witness to appear in court by serving a subpoena on that person. Generally, you can obtain a subpoena from the Clerk of Court. There is a County-specific charge for a subpoena. The witness must be served with the subpoena at least twenty-four (24) hours before the time scheduled for their appearance. Subpoenas shall be issued, signed and sealed, in blank to a party who shall fill in the name and address of the witness and file it with the clerk at least six hours before appearance is required. The party subpoenaing a witness must pay the witness a fee. If the witness must come from another county, the witness is also entitled to receive reimbursement for a roundtrip mileage from their home or residence to the courthouse. See O.C.G.A. § 24-10-24 for fees and mileage rates.

When do I have to pay the witness?

For a witness from within the County, the appearance fee may be paid when the witness appears for court. For a witness from outside the County, the appearance fee and mileage reimbursement must be given to the witness at the time the subpoena is served on the witness. Payment must be made by cash, money order, certified check, or cashier's check.

Can I subpoena records and documents as well as persons?

Yes. There is a different type of subpoena for documents or things. This is known as a "subpoena duces tecum." It should be served on the custodian of the document being subpoenaed. Just let the Clerk of Court know the type of subpoena you want.

When do I find out who won the case?

After both sides have finished presenting their evidence, the Judge will usually decide the case and announce a decision from the bench. After announcing his or her decision, the Judge will give both parties a copy of the judgment, which is the document containing the Court's decision. The judgment will specify which side prevailed and if money damages are being awarded and the amount of those damages.

How do I get my Judgment paid?

A judgment is a finding by the Court that one party has a legal obligation to pay the other party a specified amount of money. It may not be redeemed with the Clerk of Court for money nor is it a Court order to pay that money by a date certain. However, the judgment does give you certain rights to try to collect that money from the other side using the assistance of the courts.

Basic outline of post-Judgment collection procedure (Fees are county-specific)

WRIT OF FI.FA. - A writ of fi.fa. is a document that is issued by the County Clerk's Office for the purpose of recording a lien on the judgment debtor's property. It is also the legal instrument by which the Sheriff of a County may seize the assets of a judgment debtor. A writ of fi.fa. may be issued on a default judgment case immediately. If the case was contested, then a writ of fi.fa. may not be issued until 10 days after the date of judgment. A writ of fi.fa. may also be used to perfect a lien upon any motor vehicles that the judgment debtor owns. There is a special process to go through in perfecting that judgment lien. Appropriate forms are available to you through the Georgia Department of Revenue, Division of Motor Vehicles. You must send a self-addressed envelope, a check for \$1.00 for each vehicle and a copy of the fi.fa. To: Department of Revenue, Motor Vehicle Division, Trinity-Washington Bldg., Atlanta, Ga., 30334. The Superior Court records a writ of fi.fa. for you upon the General Execution Docket, which is maintained by the Clerk of Superior Court. If you know of any other real property or seizable assets the judgment debtor owns in other counties, you should apply to the clerks of such counties to have writ of fi.fa. recorded upon the General Execution Dockets of those counties, as well. When the judgment is paid in full, you as the judgment creditor have the duty to see that the writ of fi.fa. is cancelled on the appropriate General Execution Docket(s). There is an additional fee for this service and that matter is handled through the Clerk of Superior Court in the respective counties wherein the writ of fi.fa. is filed.

Current fees can be found by clicking the Filing Fees link located on the Home Page.

GARNISHMENTS - A garnishment is a separate legal action that is filed against the garnishee. The garnishee is a person or business entity that either owes funds to the judgment debtor, or is holding funds on behalf of the judgment debtor. A garnishment could be used against a bank, credit union, employer, general contractor, etc. A garnishment is filed in the county where the garnishee is located.

Current fees can be found by clicking the Filing Fees link located on the Home Page.

CONTINUING GARNISHMENT - A continuing garnishment is used when the judgment debtor is a wage earner. It lasts for a period of 180 days and the appropriate sums will be deducted from the judgment debtor's wages on a 30-day recurring basis until the entire judgment amount is collected, or until the expiration of 180 days from the date of service, whichever event shall first occur. A continuing garnishment is filed in the County where the garnishee is located.

Current fees can be found by clicking the Filing Fees link located on the Home Page.

D. POST-Judgment INTERROGATORIES - The purpose of the Post-Judgment Interrogatories is to ascertain what the assets, if any, the judgment debtor has to satisfy this judgment debt. This process can be as much as a five step process which include the following:

- i. The cost is \$10.00 per defendant. A copy is given to the filing party to be sent to the other party by certified mail. The green card must be returned to the Court after the Plaintiff receives it from the post office.

ii. If the Interrogatories are not answered within 30 days, then the judgment creditor must file an Affidavit and Motion to Require Answers to the Interrogatories and the appropriate notice. This is served upon the judgment debtor by certified mail-return receipt requested.

iii. If the judgment debtor fails to appear at the hearing, the court may, in appropriate circumstances, issue an Order requiring the judgment debtor to answer the Interrogatories within 10 days. The Office of the Sheriff serves this upon the judgment debtor.

iv. If there is no response to the Court Order requiring answers to the Interrogatories, then the judgment creditor must file an Affidavit and Motion to Invoke Sanction of Contempt for Defendant's Failure to Answer Interrogatories, plus the appropriate notice. The Office of the Sheriff must personally serve this upon the Defendant. Also, a copy of the previous order is served upon the judgment debtor, as well.

v. If the Defendant fails to appear at the hearing, or in the event he does appear and does not have a bona fide reason for not answering the Interrogatories, then the Court may enter an Order for Incarceration. Judgment debtor is then arrested by the Office of the Sheriff and held in the County Jail until the Interrogatories are answered and approved by the Magistrate.

Please note that this is only an overview of the various procedures available to you. You may wish to consult legal counsel if you have difficulties in collecting the judgment lawfully due you.

If the if the last day to file my answer falls on a weekend, and the civil division of the Magistrate Court of Pickens County is closed, what can I do?

When the last day to file an answer falls on a weekend day or a legal holiday, then the answer may be filed by close of the next business day.