

Magistrate Court

If you can't to resolve a dispute with a person or a business, you may take your problem to magistrate court.

Magistrate court, also called small claims court, is an informal court that handles money claims of less than \$15,000. This court offers a quick and inexpensive process to resolve complaints.

Examples of problems often taken to magistrate court include:

- A tenant refusing to pay for damages in excess of the security deposit.
- A landlord seeking to evict a tenant for nonpayment of rent.
- A landlord failing to return a security deposit.
- A merchant refusing to replace, repair or refund faulty merchandise.
- A person refusing to return money or property borrowed from another.
- A dry cleaner refusing to pay for lost or damaged clothing.
- A driver refusing to pay for repairs after denting someone's fender.
- An auto mechanic charging for work not done, unnecessary repairs or faulty workmanship.

You may file a claim in magistrate court in your own name without an attorney, or you may hire an attorney at your expense. Magistrate court cases are heard and decided by a judge without a jury. In some counties, mediation is recommended or required before a judge will hear the case.

How do I file a claim?

The person filing a claim in magistrate court is called the **plaintiff**. The person or business against whom the claim is brought is called the **defendant**.

The plaintiff must file a sworn statement with the clerk of the appropriate magistrate court, describing the charges made by the plaintiff against the defendant. This statement is called a **statement of claim**, or a **claim**. The statement of claim should include the following:

- The complete name, address and phone number of the plaintiff (and his attorney, if he has one.)
- The complete name and street address of the defendant.

- The damages, or the amount of money or property the plaintiff is seeking.
- A brief statement explaining why the defendant is being sued, including the date(s) of the underlying incident(s).
- Copies of all relevant documents, such as contracts, receipts and canceled checks. (Keep the original documents for your files.)

If the defendant is a person, the claim must be filed in the county where the defendant lives.

If the defendant is a corporation, the claim must be filed in the county of the registered agent for the company. Contact the Corporations Division of the Secretary of State at 404-656-2817 to find out whether a business is a corporation and, if so, the name and address of its registered agent.

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

At the time of filing, the plaintiff must pay a filing fee, which includes the charge to serve one defendant. This fee varies by county and can range from approximately \$45 to \$55. An extra charge for service for any additional defendants usually ranges from \$25 to \$35 per defendant.

The clerk of the magistrate court can help the plaintiff complete the necessary forms but *cannot* give any legal advice, such as whom to sue or whether or not the plaintiff will win.

REMEMBER, the plaintiff must prove to the judge that he is entitled to receive compensation from the defendant.

How is the defendant notified?

After the claim has been filed, the magistrate court will **serve** (notify) the defendant with a copy of the claim and a summons to appear in court.

The defendant has 30 days, in most cases, to give the court a written or oral **answer** to the claim. If the defendant fails to answer within this time, the plaintiff can ask the judge for a **default judgment**.

The defendant may file a counterclaim against the plaintiff, if the counterclaim is related to the plaintiff's original charge and the defendant's total monetary claims are also less than \$15,000. Counterclaims are usually heard at the same time as the plaintiff's claims. If the judge rules in the defendant's favor on a counterclaim, the defendant may collect damages from the plaintiff.

How is the hearing date scheduled?

The court will set a hearing date after the defendant files an answer. The hearing date will usually be 15 to 30 days after the date the answer was filed. The court will notify both parties of the date, time and location of the hearing.

How does one prepare for the hearing?

Before the hearing date, both parties should:

- Collect all documents that would help to prove their case. Make extra copies for the judge and the other party.
- Contact any witnesses who have agreed to testify and inform them of the hearing date.
- Subpoena documents or summon witnesses to appear in court, if needed. A **subpoena** is a command to appear before the judge in order to give testimony or produce evidence. A subpoena can be obtained from the clerk of the magistrate court. The fee for serving a subpoena ranges from \$5 to \$25. Some counties include this cost in the filing fee.

What is the procedure for the hearing?

Some counties require mediation prior to a hearing before the judge. This allows the parties to try to settle the case without a hearing. Even if the parties agree to settle out of court, the plaintiff may ask the defendant to pay the court costs. If they cannot agree to settle, the judge will instruct both parties about courtroom procedure and hear the arguments presented by both sides.

The plaintiff and defendant may question or dispute each other's testimony during the hearing. When both parties have completed their presentations, the judge will give a judgment (make a decision). The judge may grant an award of monetary damages to the plaintiff, to the defendant or both.

The plaintiff must appear in court on the day of the hearing, or the judge may:

- Allow the defendant to present testimony and give a judgment, without hearing from the plaintiff.
- Postpone the case until a later date.
- Dismiss the case.

The defendant must appear in court on the day of the hearing, or the judge may grant a default judgment in favor of the plaintiff.

What is a default judgment?

If the defendant fails to answer the plaintiff's claims or fails to appear at the hearing, the judge may, upon the plaintiff's request, hear and decide the case without hearing the defendant's side. This is called a **default judgment**.

If the judge grants a default judgment, the plaintiff is entitled to the amount of money damages specified in the suit, plus court costs. If the plaintiff is asking for any non-money damages (such as property), a separate hearing must be held to determine the dollar value of the damages.

If the defendant doesn't file an answer to the claim within 30 days, the defendant shall be in default. However, after the expiration of the 30 days, the defendant has 15 days in which to

"open the default" by filing an answer and paying court costs.

How does one appeal a judgment?

If either party is dissatisfied with the judgment, that party may appeal (request a review of the judgment by a higher court). Either the state court or the superior court in the county will hear the appeal, and either party may request a jury trial. Appeals must be made within 30 days from the judge's decision. The court that hears the appeal will charge a filing fee.

How does one collect the award?

In many cases collecting the court award is more difficult than proving the case in court. A judgment granting the plaintiff an award gives the plaintiff the right to collect the money damages from the defendant, but the plaintiff is responsible for actually collecting the award. The court cannot, and will not, collect awards for any party.

If the defendant is unable to make full payment immediately, the plaintiff may ask the court at the hearing to order a payment plan. The plaintiff must pay the clerical and accounting costs of such payment plan, which costs are not to exceed 10 percent of each payment made. If the defendant is unwilling to pay, the plaintiff may:

- Place a lien on the defendant's property, giving the plaintiff the right to sell the defendant's property to collect the money award. The clerk of the court, when asked by the plaintiff, can place a lien on the defendant's property. A small fee is charged to place a lien.
- Garnish the employer or bank account of the defendant in order to seize the defendant's wages or bank deposits. The garnishment process allows the plaintiff to collect installment payments on the debt the defendant owes. The plaintiff must file a separate garnishment action and pay a filing fee.

If you do not know the name of the defendant's bank or the location of other assets, you can file a post-judgment interrogatory. Mail the form, which can be obtained from the clerk of the magistrate court, to the defendant, who must respond under oath within 30 days. Note that the defendant may close the bank account when advised of the pending garnishment, and then you would need to obtain information about any new account.

- Hire a collection agency to recover the money damages owed. These services can be costly and are usually based on a percentage of the money collected from the defendant.

CONTACT THE LOCAL MAGISTRATE COURT FOR MORE INFORMATION.