

NOW, ARE YOU READY TO FILE YOUR CLAIM? OR MAYBE YOU WANT TO ANSWER THE ONE YOU WERE JUST SERVED?

If so, you have several choices on how to do so:

Statement of Claim: \$113.00 (**this could change with multiple defendants)

1. You may come to the Magistrate Clerks' office and file in person. We are located at: 145 L Cary Bittick Drive – Forsyth GA. The Monroe County Magistrate Court does NOT accept cash. Acceptable pay: check, money order, debit or credit card.
2. You may file on-line and pay using a credit or debit card:
www.efilegeorgia.com

Can I file my case in the Magistrate Court?

The Magistrate Court of Monroe County is also referred to as small claims court. You may 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 the *Superior* Court. This limit applies to both the claim of the Plaintiff and any counterclaim of the Defendant.

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, cases in which the Court would be called upon to decide the legal owner of real estate, or filings for mandamus, prohibition, specific performance, quo warranto or injunctions (“equity cases”). Jurisdiction in these cases belongs in *Superior* Court.

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

The party who files a claim is referred to as the “Plaintiff” or “Claimant.” The party who is sued is referred to as the “Defendant” or “Respondent.” A claim must designate the proper parties. 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.

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 may obtain information on a corporation using the Georgia Secretary of State’s website: <https://ecorp.sos.ga.gov/>.

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 may obtain information on a corporation using the Georgia Secretary of State’s website: <https://ecorp.sos.ga.gov/>. 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.

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. If the defendant answers the claim, the Clerk will notify all parties of the trial date.

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

The defendant has (30) days from the date that they were served with the complaint in which to answer. If the defendant fails to file an answer to the complaint within 30 days, the law provides the defendant an additional (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 of the trial date.

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

The Clerk will serve a copy of the Answer to the Plaintiff.

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.

I have been sued, what should I do?

Seeking legal advice is a good decision. If you elect to represent yourself, you are responsible for filing an Answer with the Court *within* thirty (30) days of being served.

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 15 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 (45) 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.

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. Witnesses who have direct knowledge of the facts to which they testify must present all testimony in person. 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 Evidence Rules against “hearsay” evidence.

When do I find out who won the case?

After both sides have finished presenting their evidence, the Judge may decide the case and announce a decision from the bench or take the case under advisement and issue a written opinion within 30 days of the hearing. 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 collect my Judgment?

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. The judgment gives you certain rights to try to collect that money from the other side using your choice of various court processes. Obtaining a Judgment is *not* the final step; collecting on the judgement is.

A very general, basic outline of some possible post-Judgment collection procedures; NOT to be substituted for legal advice:

- **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.
- 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 may apply to the clerks of such counties to have the writ of fi.fa. recorded upon the General Execution Dockets of those counties, as well.
- **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 (financial institution, employer, etc) is located.
- **CONTINUING GARNISHMENT** – A continuing garnishment is used when the judgment debtor is a wage earner. It lasts for a period of 1095 days and the appropriate sums will be deducted from the judgment debtor’s wages until the entire judgment amount is collected, or until the expiration of 1095 days from the date of service, whichever event shall first occur. A continuing garnishment is filed in the County where the garnishee (employer) is located.

*****Please note that this is only a very general overview of the various procedures available to you, and not intended as legal advice. Consult legal counsel if you have difficulties in collecting the judgment lawfully due you.***