White County Magistrate Court

General Guidelines September 19, 2012

***NOTICE:* This information is only for the purpose of explaining the general processes of actions in Magistrate Court. It is not exhaustive and is not to be substituted for competent legal counsel. If you are in doubt or unsure how to proceed or respond, you should consult an attorney.**

Court personnel are NOT authorized to provide legal advice. The Clerks will be happy to explain the various procedures if you do not understand the information in this pamphlet. Judges CANNOT discuss a case unless both parties are present.

CIVIL CLAIM

Small Claim Court is an informal court that handles money claims for less than $15,000.00. This court offers a quick and inexpensive process for disagreements regarding monetary damages. If you have been unable to resolve a dispute with a person or a business located here in White County, after an attempt to settle the dispute has been made and was unsuccessful, you may file a claim with the Magistrate Court in the Clerk of the Superior Court's Office. Examples of problems often brought to Small Claims Court may include:

- A merchant refusing to replace, repair, or refund faulty merchandise.
- A person refusing to pay for lost or damaged personal property.
- An auto mechanic charging for work not done, unnecessary repairs, or faulty workmanship.
- A tenant refusing to pay for damages in excess of the security deposit or unpaid rent.
- A landlord failing to return a security deposit.
- An employer who refuses to pay wages.

The Defendant will have a total of 30 days (plus an additional 15 days to open default with court costs paid by the Defendant) to answer the claim. If an answer is filed, the hearing will be scheduled no earlier than 15 days nor more than 30 days after the date of notice. If no answer is filed, a default judgment may be entered on behalf of the Plaintiff for liquidated damages without further proof. With un-liquidated damages, a hearing must be conducted and plaintiff must prove damages. For a claim to be liquidated, it must be an amount fixed and certain, either by agreement of parties or by operation of law. Amount of claim must be specific. If at the end of the hearing the court finds in your favor, a judgment may be issued for a monetary amount, and if the Defendant fails to pay the judgment amount in full plus your court costs, the full amount may be collected through fi-fa and garnishment procedures.

Statement of Claim Code Section Reference:

15-10-43. Statement of claim; service of process; answer to claim; default judgments; opening of default; relief in magistrate court.

(a) Actions shall be commenced by the filing of a statement of claim, including the last known address of the defendant, in concise form and free from technicalities. The plaintiff or his or her agent shall sign and verify the statement of claim by oath or affirmation. At the request of any individual, the judge or clerk may prepare the statement of claim and other papers required to be filed in an action. The statement of claim shall include a brief statement of the claim giving the defendant reasonable notice of the basis for each claim contained in the statement of claim and the address at which the plaintiff desires to receive the notice of hearing.

(b) A copy of the verified statement of claim shall be served on the defendant personally, or by leaving a copy thereof at the defendant's dwelling or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the claim to an agent authorized by appointment or by law to receive service of process, and such service shall be sufficient. Service of said process shall be made within the county as provided in this Code section. Service outside the county shall be by second original as provided in Code Section 9-10-72. Said service shall be made by any official or person authorized by law to serve process in the superior court, by a constable, or by any person sui juris who is not a party to, or otherwise interested in, the action, who is specially appointed by the judge of said court for that purpose. When the claim and notice are served by a private individual, such individual shall make proof of service by affidavit, showing the time and place of such service on the defendant.

(c) An answer to the claim must be filed with the court or orally presented to the judge or clerk of the court within 30 days after service of the statement of claim on the defendant to avoid a default. The answer shall be in concise form and free from technical requirements, but must admit or deny the claim of the plaintiff. The answer shall contain the address at which the defendant desires to receive the notice of hearing. If the answer is presented to the judge or clerk orally, the judge or clerk shall reduce the answer to writing. A copy of the answer shall be forwarded to the plaintiff and defendant with the notice of hearing. If an answer is timely filed or presented, the court shall within ten days of filing or presentation of the answer notify the defendant and the plaintiff of the calling of a hearing on the claim. The notice shall include the date, hour, and location of the hearing, which date shall be not less than 15 nor more than 30 days after the date the notice is given. The notice shall be served on the plaintiff and the defendant by mail or personal service to the address given by the plaintiff at the time he or she files his or her claim and the address given by the defendant at the time he or she files or presents his or her answer. The date of mailing shall be the date the notice is given. The clerk shall enter a certificate of service.

(d) Upon failure of the defendant to answer the claim within 30 days after service of the statement of claim, the defendant shall be in default. The defaulting party may open the default upon filing an answer and upon payment of costs within 15 days of default. If the defendant is still in default after the expiration of 15 days after the answer is due, the plaintiff shall be entitled to a default judgment without further proof if the claim is for liquidated damages. When the claim is for unliquidated damages, the plaintiff must offer proof of the damage amount. Separate notice of the date and time of the unliquidated damages hearing shall be sent to the defendant at his or her service address. The defendant shall be allowed to submit evidence at that hearing on the issue of the amount of damage only.

(e) (1) When a hearing is scheduled pursuant to subsection (c) of this Code section, upon failure of the defendant to appear for the hearing, the plaintiff shall be entitled to have the defendant's answer stricken and a default judgment entered; provided, however, that no default judgment shall be granted if the defendant appears at trial through counsel. If the claim is for liquidated damages, the plaintiff shall be entitled to take a judgment in the amount set forth in the complaint without further proof. If the claim is for unliquidated damages, the plaintiff shall proceed to prove his or her damages and take judgment in an amount determined by the judge.

(2) When a hearing is scheduled pursuant to subsection (d) of this Code section, upon failure of the defendant to appear, the plaintiff shall be entitled to submit proof of the damages and take judgment in an amount determined by the judge.

(3) If the plaintiff fails to appear for a hearing scheduled pursuant to either subsection (c) or (d) of this Code section, the court on motion of the defendant, or on its own motion, may dismiss the plaintiff's complaint, with or without prejudice, in the discretion of the court.

(f) At any time before final judgment, the court, in its discretion, upon payment of costs, may allow the default to be opened for providential cause preventing the filing of required pleadings or for excusable neglect or where the judge, from all the facts, shall determine that a proper case has been made for the default to be opened, on terms to be fixed by the court. In order to allow the default to be thus opened, the showing shall be made under oath, shall set up a meritorious defense, shall offer to plead instanter, and shall announce ready to proceed with the trial.

(g) Notwithstanding the provisions of Code Section 15-10-42, the magistrate court may grant relief from a judgment under the same circumstances as the state court may grant such relief. Requests for relief from judgments pursuant to this Code section in the magistrate court shall be by filing a written motion which sets forth the issues with reasonable specificity. The procedure shall then be the same as in other cases except the court may assess costs as seem just.

(h) A complaint in equity to set aside a judgment of the magistrate court may be brought under the same circumstances as a complaint to set aside a judgment in a court of record.

(i) Nothing in this chapter shall be construed to prohibit an employee of any corporation or other legal entity from representing the corporation or legal entity before the magistrate court.

CRIMINAL WARRANTS

Warrant application hearings may be utilized by individuals who have reason to believe that a person has committed a crime against you or a minor in your custody. Questions you may want to ask yourself prior to making application for an arrest warrant:

- Is the act committed a crime in violation of the Official Code of Georgia?
- Did the crime occur in White County?
- Have you reported the crime to the Sheriff's Dept. or Police Dept.?
- Do you have any evidence that this person committed the crime?
- Do you have information on where this person may be located?

Once the application has been completed, a hearing date will be scheduled approximately three weeks from the date of application (in some special circumstances, under statutory guidelines, warrants may be issued immediately). Notice of the hearing with a copy of your application will be sent to the person being accused of committing a crime. It is important to supply our office with a current mailing or physical address of the accused person. Most cases are ordered to mediation prior to trial. If an agreement can be reached, the application would be dismissed. However, you may re-file for the warrant if the mediation agreement is violated. If an agreement can not be reached, the case will go before the judge for a hearing. If at the hearing the Court finds probable cause to issue a warrant, the Accused would go to jail, post a bond, and if the District Attorney's Office chooses to prosecute the charge, the Accused will appear in the trial court at a later date to enter a plea of guilty or not guilty.

IT IS YOUR OR YOUR HIRED ATTORNEY'S RESPONSIBILITY TO PRESENT YOUR CASE IN COURT. THE DISTRICT ATTORNEY'S OFFICE WILL NOT BE PROSECUTING YOUR CASE AT THE PRE-WARRANT HEARING. AT THE PRE-WARRANT HEARING THE JUDGE HAS NO AUTHORITY TO ORDER ITEMS RETURNED OR MONEY JUDGMENTS ISSUED. THE HEARING IS FOR THE SOLE PURPOSE OF ISSUING OR NOT ISSUING A CRIMINAL WARRANT.

Arrest Warrant Code Section Reference:

O.C.G.A. 17-4-40

(a) Any judge of a superior, city, state, or magistrate court or any municipal officer clothed by law with the powers of a magistrate may issue a warrant for the arrest of any offender against the penal laws, based on probable cause either on the judge's or officer's own knowledge or on the information of others given to the judge or officer under oath. Any retired judge or judge emeritus of a state court may likewise issue arrest warrants if authorized in writing to do so by an active judge of the state court of the county wherein the warrants are to be issued.

(b) (1) If application is made for a warrant by a person other than a peace officer or law enforcement officer and the application alleges the commission of an offense against the penal laws, the judge or other officer shall schedule a warrant application hearing as provided in this subsection unless the person accused has been taken into custody by a peace officer or law enforcement officer or except as provided in paragraph (6) of this subsection; provided, however, that a warrant may be denied without the notice required in paragraph (2) of this subsection where the application form and any testimony from the affiant provided at the time of the application do not demonstrate probable cause for issuing a warrant.

(2) Except as otherwise provided in paragraph (6) of this subsection, a warrant application hearing shall be conducted only after attempting to notify the person whose arrest is sought by any means approved by the judge or other officer which is reasonably calculated to apprise such person of the date, time, and location of the hearing.

(3) If the person whose arrest is sought does not appear for the warrant application hearing, the judge or other officer shall proceed to hear the application and shall note on the warrant application that such person is not present.

(4) At the warrant application hearing, the rules regarding admission of evidence at a commitment hearing shall apply. The person seeking the warrant shall have the customary rights of presentation of evidence and cross-examination of witnesses. The person whose arrest is sought may cross-examine the person or persons applying for the warrant and any other witnesses testifying in support of the application at the hearing. The person whose arrest is sought may present evidence that probable cause does not exist for his or her arrest. The judge or other officer shall have the right to limit the presentation of evidence and the cross-examination of witnesses to the issue of probable cause.

(5) At the warrant application hearing, a determination shall be made whether or not probable cause exists for the issuance of a warrant for the arrest of the person whose arrest is sought. If the judge or other officer finds that probable cause exists, the warrant may issue instanter.

(6) Nothing in this subsection shall be construed as prohibiting a judge or other officer from immediately issuing a warrant for the arrest of a person upon application of a person other than a peace officer or law enforcement officer if the judge or other officer determines from the application or other information available to the judge or other officer that:

(A) An immediate or continuing threat exists to the safety or well-being of the affiant or a third party;

(B) The person whose arrest is sought will attempt to evade arrest or otherwise obstruct justice if notice is given;

(C) The person whose arrest is sought is incarcerated or otherwise in the custody of a local, state, or federal law enforcement agency;

(D) The person whose arrest is sought is a fugitive from justice;

(E) The offense for which application for a warrant is made is deposit account fraud under Code Section 16-9-20, and the person whose arrest is sought has previously been served with the ten-day notice as provided in paragraph (2) of subsection (a) of Code Section 16-9-20; or

(F) The offense for which application for the warrant is made consists of an act of family violence as defined in Code Section 19-13-1.

In the event that the judge or officer finds such circumstances justifying dispensing with the requirement of a warrant application hearing, the judge or officer shall note such circumstances on the face of the warrant application.

(7) No warrant shall be quashed nor evidence suppressed because of any irregularity in proceedings conducted pursuant to this subsection not affecting the substantial rights of the accused under the Constitution of this state or of the United States.

(8) Nothing contained in this subsection shall prohibit a judge from denying a warrant based upon the application and testimony heard at the time such application is made without requiring notice to the person whose arrest is sought.

(c) Any warrant for the arrest of a peace officer, law enforcement officer, teacher, or school administrator for any offense alleged to have been committed while in the performance of his or her duties may be issued only by a judge of a superior court, a judge of a state court, or a judge of a probate court.